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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 40.

MARIANO F. SENA, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

FILED JANUARY 23, 1903.

(13,029.)

(18,029.)

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1 UNITED STATES OF AMERICA, } ss:
Territory of New Mexico, }

Be it remembered that heretofore, to wit, on the 29th day of September, A. D. 1899, Mariano F. Sena, by his attorneys, F. W. and H. S. Clancy, filed in the office of the clerk of the Court of Private Land Claims, at Santa Fé, Territory of New Mexico, a petition, which petition is in words and figures following, to wit:

2 In the Court of Private Land Claims.

To the honorable Court of Private Land Claims and the chief justice and associate justices thereof:

Your petitioner Mariano F. Sena, resident of the city of Santa Fé, in the Territory of New Mexico, represents that he is the owner of that certain grant and tract of land lying and being situate in the county of Santa Fé in the Territory of New Mexico, known and called by the name of the Jose de Leyba grant, and bounded and described as follows, to wit:

On the east by the San Marcos road; on the south by an arroyo called Cuesta del Oregano; on the west by the lands of Juan Garcia de las Rivas, and on the north, by the lands of Captain Sebastian de Vargas.

Said tract of land was granted to Jose de Leyba by the then King of Spain by Governor and Captain General Juan Domingo de Bustamante, on the 25th day of May, in the year A. D., 1728,
3 and the granting papers for the same are in the form of an absolute and perfect grant; the original papers of which said grant are now on file in the office of the surveyor general of the Territory of New Mexico and are not in the power, possession, or control of your petitioner; said original papers being identified as archive No. 441.

Said land has never been officially surveyed and your petitioner does not know the area thereof, but he files herewith a sketch map of the same showing approximately according to the best information which your petitioner can obtain, the shape of said land and its location as far as possible; but the exact area and location and shape cannot be stated or ascertained until a survey thereof shall be made.

Your petitioner claims said land by conveyances from the heirs and assigns of the original grantee.

There is no person in possession of the said land claiming the same adversely to your petitioner or otherwise than by the lease or permission of your petitioner, and those jointly interested with your petitioner as heirs and assigns under said original grantee, heirs and assigns.

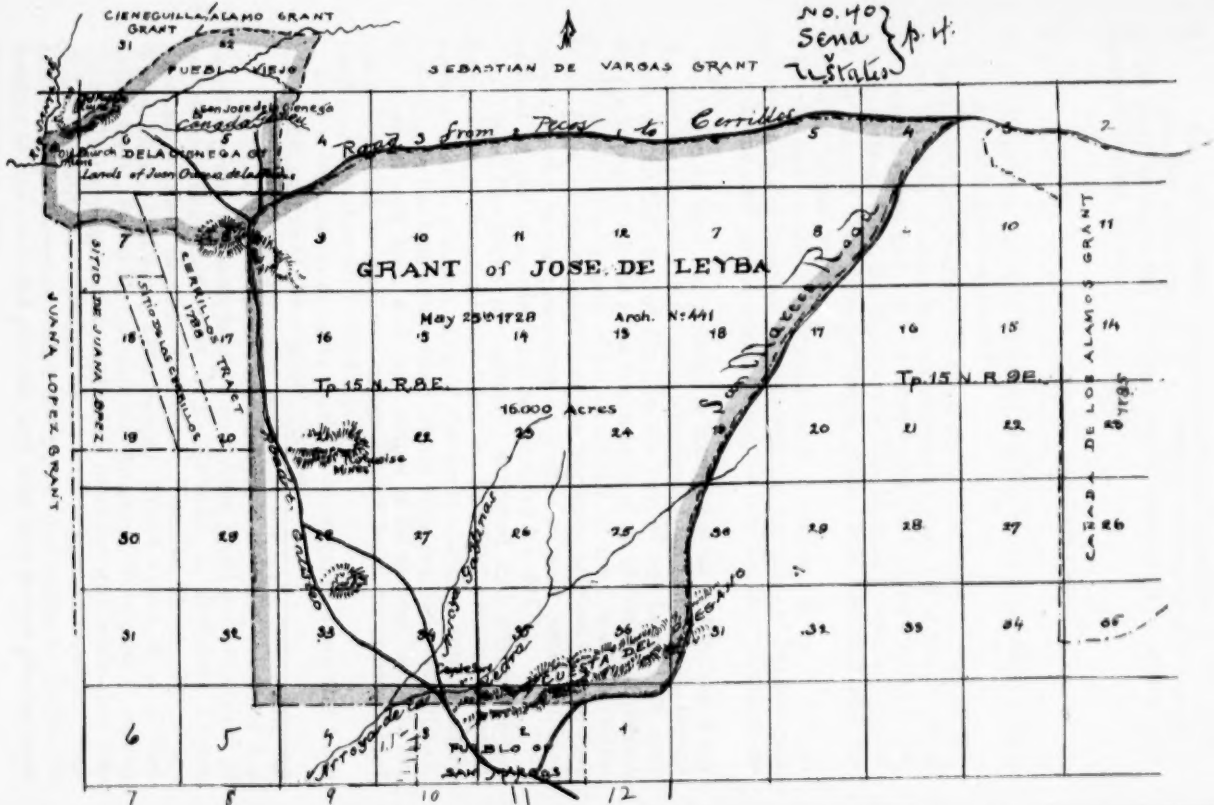
Said claim to said land has not been confirmed nor has it been

considered or acted upon by Congress or any other authorities constituted by law for the adjustment of land titles in the limits of said Territory of New Mexico as acquired.

Your petitioner therefore prays that the validity of such title and claim of said grant may be enquired into and decided by this honorable court and the same confirmed to your petitioner and the other heirs and assigns of said original grantee, and that he may have such other and further relief as the nature of the case requires and to your honors may appear meet and proper.

F. W. CLANCY,
H. S. CLANCY,
Attorneys for Petitioner.

(Here follows map marked p. 4.)


CIENEGUILLA ALAMO GRANT
SEBASTIAN DE VARGAS GRANT
NO. 40
Sena
Ptd.
PUEBLO VIEJO
Road from Pecos to Cerrillos
GRANT of JOSE DE LEYBA
May 25th 1728
Arch. N:441
Tp. 15 N. R8E.
Tp. 15 N. R9E.
16,000 Acres
SITIO DE JUANA LOPEZ
CERRILLOS 1788 TRACT
SITIO DE LOS CERRILLOS
JUANA LOPEZ GRANT
CAÑADA DE LOS ALAMOS GRANT
Arroyo Gallinas
Arroyo Galisteo
Arroyo de la Vega
PUEBLO OF SAN MARCOS
LA CUESTA DEL COYOTE
Old Church DELA CIENEGA
Lands of Juan Ortega de la Peña
San Jose de la Cienega
Canada del Rio
Mine
Mines

5 And be it further remembered that thereafter, to wit, on the 19th day of December, A. D., 1899, there was filed in the office of the clerk an amended petition which petition is in words and figures following, to wit:

6 In the Court of Private Land Claims.

To the honorable Court of Private Land Claims and the chief justice and associate justices thereof:

Your petitioner, Mariano F. Sena, resident of the city of Santa Fé, in the Territory of New Mexico, represents that he is the owner of that certain grant and tract of land lying and being situate in the county of Santa Fé in the Territory of New Mexico, known and called by the name of the "Jose de Leyba grant," and bounded and described as follows, to wit:

On the east by the San Marcos road; on the south by an arroyo called Cuesta del Oregano; on the west by the lands of Juan Garcia de las Rivas, and on the north, by the lands of Captain Sebastian de Vargas.

Said tract of land was granted to Jose de Leyba by the then King of Spain, by Governor and Captain General Juan Domingo de Bustamante, on the 25th day of May, in the year of our Lord, 1728, and the grant papers for the same are in form of an absolute and perfect grant; the original papers of which said grant are now on file in the office of the surveyor general of the Territory of New Mexico and are not in the power, possession or control of your petitioner, said original papers being identified as "archive No. 441."

Said land has never been officially surveyed and your petitioner does not know the area thereof, but he has filed with his original petition herein, a sketch map of the same showing approximately according to the best information which your petitioner can obtain, the shape of said land and its location as fas as possible; but the exact area and location and shape cannot be states or ascertained until a survey thereof shall be made.

Your petitioner claims said land by conveyance from the heirs and assigns of the original grantee.

7 Your petitioner states that since the filing of his original petition herein, he has been informed that the owners of Los Cerrillos grant, the same being a confirmed grant and numbered 78 on the docket of this court, J. P. McNulty, L. Bradford Prince, Thomas Whalen, Samuel Bromagen, Thomas Moore, Jr., Diego Mares, Bernardo Carrol, Otto Seigler, Albert Ceyer, M. J. O'Niel, Julian Padia, Pedro Muñiz, and the American Torquoise Company claim adverse possession to real estate included within the said Jose de Leyba grant otherwise than by the lease or permission of your petitioner, and he therefore makes said parties and company parties defendant to this amended petition, and asks that proper process issue for service on them.

Said claim to said land has not been confirmed nor has it been considered or acted upon by Congress or any other authorities con-

stituted by law for the adjustment of land titles in the limits of said Territory of New Mexico as acquired.

Your petitioner therefore prays that the validity of such title and claim and of said grant may be inquired into and decided by this honorable court and the same confirmed to your petitioner and the other heirs and assigns of said original grantee, and that he may have such other and further relief as the nature of the case requires and to your honors may appear meet and proper.

F. W. CLANCY,
H. S. CLANCY,
Attorneys for Petitioner.

8 And be it further remembered that thereafter, to wit, on the 16th day of January A. D. 1900, there was filed in the office of the clerk an answer; which answer is in words and figures following, to wit:

9 In the U. S. Court of Private Land Claims for the District of New Mexico.

MARIANO F. SENA
vs.
THE UNITED STATES, THE AMERICAN TURquoise Company, J. P. McNulty, *et al.* } General Number, 278.

Now come the above-named defendants The American Turquoise Company and J. P. McNulty by Edward L. Bartlett their attorney and for their answer to the petition of the plaintiff filed herein deny that the said petitioner Mariano F. Sena is the owner of that certain land grant and tract lying and being situate in the county of Santa Fé in the Territory of New Mexico known and called by the name of the "Jose de Leyba grant" by the boundaries therein set out.

They deny that said tract of land was granted to Jose de Leyba by the then King of Spain by Governor and Captain General Juan Domingo de Bustamente on the twenty-fifth day of May in the year A. D. 1728 or at any other time. And they deny that the granting papers for the same are in the form of an absolute and perfect grant.

And said defendants deny that said land has never been officially surveyed, but state the fact to be that a very large portion if not all of the said described land has been officially surveyed under the direction of the United States as public land of the United States under the direction of the surveyor general of New Mexico, and for twenty years last past has been recognized by the United States and in its land offices as such public land.

And said defendants deny that they claim adverse possession to real estate included within the said Jose de Leyba grant, otherwise than by the lease or permission of said petitioner, but they state to the court that they are now and have been for many years last past in the actual, exclusive, open and notorious possession of five mining claims with a superficial area of about one hundred acres of

land in the southern part of Santa Fé county just north of the "Los Cerrillos" confirmed grant referred to in plaintiff's petition; that they have continuously worked and operated said mining claims which were located under the mining laws of the United States and the Territory of New Mexico and the rules and regulations of the United States in the said Territory and have the final receipt for a patent to one of said mining claims, under proceedings to obtain a patent therefor; that they have paid the taxes levied and assessed against the said property; and that they and their grantees have enjoyed the exclusive undisturbed and quiet possession of the same for more than ten years last past.

Said defendants therefore pray that the proof of the denials and allegations contained in this their answer may be inquired of by the court.

THE AMERICAN TURQUOISE
COMPANY AND
J. P. McNULTY,
By EDWARD L. BARTLETT,
Their Attorney.

10 And be it further remembered that thereafter, on the 22d day of February, A. D. 1900, there was filed in the office of the clerk a notice of application to take testimony, which notice is in words and figures following to wit:

11 In the Court of Private Land Claims, Santa Fé District.

MARIANO F. SENA
vs.
UNITED STATES ET AL. } No. 278. Jose de Leyba Grant.

To the plaintiff and his attorneys in the above-entitled cause:

You are hereby notified that an application will be presented in the court-room of the Federal building, at Santa Fé, New Mexico, at ten o'clock on the forenoon of Thursday, February 22, 1900, before and to the Honorable Wilbur F. Stone, associate justice of the Court of Private Land Claims, for an order for the taking of testimony by deposition before him, on the following day, to wit, Friday, February 23, 1900, at the same hour and place, of the following-named ancient and infirm witnesses in said cause, the residence of each of said witnesses being at the place below named, opposite their respective names, and within the county of Santa Fé, Territory of New Mexico:

Nasario Gonzales, La Cienega.
Francisco Romero, La Cieneguilla.
Francisco Bustamante, Los Tanques.
Antonio Bustamante, Los Tanques.
Jesus Narvais, Juana Lopez.

Jose Duran or Benabides, La Cienega.
Eligio Sedillo, Santa Fé.

MATT. G. REYNOLDS,
U. S. Attorney, C. P. L. C.
EDWARD L. BARTLETT,
Attorney for Defendants J. P. McNulty and The American Turquoise Company.

12 TERRITORY OF NEW MEXICO, } ss:
County of Santa Fé, }

On this 15th day of February, A. D. 1900, personally appeared before me the subscriber, Francisco Delgado, and makes oath that he delivered a true copy of the above and foregoing application to Harry S. Clancy on the 15th day of February, A. D. 1900.

FRANCISCO DELGADO.

Subscribed and sworn to before me this 15th day of February, A. D. 1900.

GEO. W. KNAEBEL,
[SEAL.] *Notary Public, Santa Fé., N. M.*

13 And be it further remembered that on said day last mentioned, to wit, the 22d day of February, A. D., 1900, there was filed in the office of the clerk an application to take testimony of witnesses; which application is in words and figures following, to wit:

14 In the Court of Private Land Claims, Santa Fé District.

MARIANO F. SENA
vs.
UNITED STATES ET AL. } No. 278. Jose De Leyba Grant.

To the Honorable Wilbur F. Stone, associate justice, C. P. L. C.:

The undersigned defendants respectfully show unto your honor that the testimony of the hereinafter-named witnesses will be and is of great importance to them in said above-entitled cause; that it is desired and expected to be proved by said witnesses, and by each of them, that the allegations of plaintiff's petition as to the possession, boundaries, location and existence of the grant stated and mentioned in said petition, to wit, the Jose de Leyba grant, are untrue, and that the said grant never existed, as stated in said petition, and was never held or located, as therein stated.

Defendants further show that said witnesses are aged, infirm and ancient persons, and it is exceedingly improbable that said witnesses would be able to attend on the hearing of said cause in the court, because of said age and infirmity, that said witnesses all reside in the county of Santa Fé, Territory of New Mexico, at the places below stated opposite their respective names, the names of said witnesses being as follows, to wit:

Nasario Gonzales, La Cienega.
Francisco Romero, La Cieneguilla.
Francisco Bustamante, Los Tanques.
Antonio Bustamante, Los Tanques.
Jesus Narvais, Juana Lopez.
15 Jose Duran or Benabides, La Cienega.
Eligio Sedillo, Santa Fé.

Wherefore, defendants pray that an order be made by your honor for the taking of the said testimony on Friday, February 23, 1900, at the hour of 10 a. m., at the court-room in the Federal building, at Santa Fé, New Mexico.

MATT. G. REYNOLDS,
U. S. Attorney, C. P. L. C.
EDWARD L. BARTLETT,
Attorney for Defendants J. P. McNulty and The American Turquoise Company.

TERRITORY OF NEW MEXICO, } ss:
County of Santa Fé, }

Before me, a notary public in and for the county and Territory aforesaid, personally appeared Edward L. Bartlett who having been first duly sworn deposes and on his oath says that he is the attorney of J. P. McNulty and Am. Turquoise Co. defendant- above stated; that the allegations of the above and foregoing petition are true, except as stated therein on information and belief, and as to such allegations deponent believes them to be true.

EDWARD L. BARTLETT.

Subscribed and sworn to before me this 15th day of February, A. D. 1900.

[SEAL.] GEO. W. KNAEBEL,
Notary Public.

16 And be it further remembered that thereafter, in vacation, to wit, on the 22d day of February A. D. 1900, the court made the following order:

In the Court of Private Land Claims, Santa Fé District.

MARIANO F. SENA
vs.
UNITED STATES ET AL. } No. 278. Jose de Leyba Grant.

Upon considering the application of the defendants to take the testimony, by deposition, of the following-named witnesses, in the above-entitled cause, and it appearing to the court that said witnesses are ancient and infirm, and that such witnesses ought not to be compelled to appear in court and testify, and that there is reasonable ground to believe that if the taking of said testimony is further delayed it would be impos-ible for them so to appear and testify, by reason of said age and infirmity:

Nasario Gozales, Francisco Romero, Francisco Bustamente, Antonio Bustamante, Jesus Narvais, Jose Duran or Benavides and Eligio Sedillo.

And it further appearing that notice of the time and place of making said application *have* been given to the adverse attorney of record, as required by law and the rules of this court;

It is ordered that the depositions of said witnesses shall be taken before me, the undersigned justice of the Court of Private Land Claims, on Friday morning, February 23, at 10 a. m., at the Federal building in the city of Santa Fé, New Mexico.

Santa Fé, N. M., February 22nd 1900.

(Signed) WILBUR F. STONE,
Associate Justice, C. P. L. C.

17 And be it further remembered that thereafter, to wit, on the 6th day of April A. D., 1900, there was filed in the office of the clerk an answer; which answer is in words and figures following, to wit:

18 UNITED STATES OF AMERICA, *ss:*

In the Court of Private Land Claims, Santa Fé District.

MARIANO F. SENA, Complainant,
vs.
UNITED STATES, Defendant. } No. 278. Jose de Leyba Grant.

Answer.

Now comes The United States by its attorney, Matt. G. Reynolds, and for answer to the petition and amended petition filed in the above-entitled cause says:

That it is not true, as alleged in said petitions, that plaintiff is the owner of that certain tract of land described in said petitions, or any part thereof.

That it is not true that the tract of land described in said petitions was granted to Jose de Leyba by the then King of Spain, by Governor and Captain General Juan Domingo de Bustamente, on the 25th day of May, A. D. 1728; and it is not true that the granting papers for the same, set forth and described in plaintiff's petition, are in the form of and constitute an absolute and perfect grant.

Defendant admits that said land has never been officially surveyed and denies that such sketch map, filed by petitioner, correctly shows the shape of said land and its location, but on the contrary alleges that if any grant was ever made, as alleged in plain-
19 tiff's petition and amended petition, the same was located in a manner very different from that set forth in said sketch map, and covered no portion of the premises indicated in said petition and sketch map.

Defendant further shows that said petition was not filed within two years from March 3, 1891, as provided by the act establishing

the Court of Private Land Claims, and the claim mentioned in said petition consequently became and was abandoned and forever barred at the expiration of said two years. Defendant pleads said limitation in bar of the claim herein presented.

That as to the several other matters and things alleged in said petition, defendant has no knowledge or information to enable it to form a belief as to the truth thereof, and it accordingly denies each and all of said allegations and prays that complainant be put to the proof of the same, as is provided by the act establishing this court.

And this defendant, further answering, denies that the complainant is entitled to the relief or any part thereof in his petition alleged and prayed for, and prays the same advantage of this answer as if it had pleaded or demurred to the said petitions.

Now having fully answered, it prays the court that a decree may be entered rejecting the claim for said alleged grant and dismissing the petition, and for such other orders as to the court may seem meet and proper and which it may be authorized to make in the premises.

MATT. G. REYNOLDS,
U. S. Attorney, C. P. L. C.

20 And be it further remembered that thereafter, to wit, on the 30th day of April A. D. 1900, there was filed in the office of the clerk an answer; which answer is in words and figures following, to wit:

21 In the Court of Private Land Claims, Sitting at Santa Fé, in the Territory of New Mexico.

MARIANO F. SENA
vs.
UNITED STATES OF AMERICA. } No. 278.

Answer of Jacobo Perea, Beatriz Perea de Armijo, and Justo Armijo, Her Husband, to the Petition of the said Mariano F. Sena.

The said Jacobo Perea and Beatriz Perea de Armijo, as owners of the Cerrillos land grant, and the said Justo R. Armijo who joins herein as the husband of said Beatriz Perea de Armijo, for answer to so much of said petition of said Mariano F. Sena, as they are advised that it is material to answer, say that they have no sufficient knowledge or information as to the matters alleged in said petition to enable them to admit or deny the same, and they call for strict proof thereof. And further answering they show to the court that on the — day of —— 189–, by the decree of this court in the case numbered 78 on the docket of this court, a claim for said Cerrillos grant was duly confirmed; that a survey of said grant under such confirmation has been made and approved by this court, as will appear by reference to the record of said cause numbered 78; and that they are informed and believe that the said Cerrillos grant as

so confirmed and surveyed, conflicts to some extent with the claim made herein by Mariano F. Sena. They therefore pray the court, if any confirmation of the said claim of said Sena in whole or in part be granted by this court in this cause, that so much, if any, of the land so covered by said confirmation and survey, as may fall within the limits of the land claimed by said Sena, shall be excepted from the effect of any confirmation of the claim made in this cause.

(Signed) J. R. ARMIJO.
BEATRIZ P. ARMIJO.
JACOBO PEREA.

22 And be it further remembered that thereafter, to wit, on the 30th day of April, A. D. 1900, being the 6th day of the April term of said court, 1900, held at Santa Fé, in the Territory of New Mexico, the following proceedings were had:

MARIANO F. SENA
vs.
UNITED STATES. } No. 278. Jose de Leyba Grant.

The above-entitled cause now coming on to be heard there appeared F. W. Clancy and H. S. Clancy for and on behalf of the plaintiffs and Mr. Matthew G. Reynolds, U. S. attorney, and W. H. Pope, Esq., assistant U. S. attorney, appearing for the United States, and E. L. Bartlett, Esq., for the American Turquoise Company the parties announcing themselves ready, the trial of the cause was proceeded with, oral and documentary proof was introduced. The trial of this cause not being concluded, the same was resumed on the following days, to wit, the 1st, 2d, 3d, and 4th days of May, 1900, when the same was concluded and submitted to the court for decision and was by the court taken under advisement.

23 On the trial of said cause the following testimony, oral and documentary, was offered and introduced:

24 In the U. S. Court of Private Land Claims, Santa Fé, New Mexico, April Term, 1900.

MARIANO F. SENA
versus
UNITED STATES, J. P. McNULTY, ET AL. } No. 278. Joseph de Leyba Grant.

APRIL 30, 1900.

Appearances.

Mr. Frank W. Clancy and Mr. H. S. Clancy appeared for the plaintiff.

Mr. Matt. G. Reynolds, United States attorney, and Mr. William H. Pope, assistant U. S. attorney appeared for the Government.

Mr. Edward L. Bartlett appeared for J. P. McNulty and other claimants.

Mr. CLANCY: I offer in evidence archive number 441 from the

office of the surveyor general which is the original grant relied upon in this case. (Marked Plaintiff's Exhibit A.)

Objection because it is immaterial, irrelevant and incompetent, and that the paper tendered in evidence is not competent evidence, it not having been shown that the *testimonio* was issued or the existence of such *testimonio* if issued, or the record of the grant or *testimonio*. We next offer in evidence archive number 732 from the office of the surveyor general. (Plaintiff's Exhibit B.)

It is admitted that this is an archive, but it is objected to because it is immaterial and irrelevant and not having any bearing on the location of this grant or on the validity of the grant.

I next offer in evidence an extract from page 8 of the book of Cabildo which is a part of the archives from the office of the surveyor general and being the one in which was noted grants in the year 1713, and this particular extract relates to the presentation for record in this book of a small grant by Captain Juan Garcia de las Rivas. (Plaintiff's Ex. "C.")

25 Father ANTONIO FORCHEGU sworn on the part of the plaintiff testified upon direct examination by Mr. Clancy as follows:

Q. What is your name, and occupation?

A. My name if Antonio Fourchegu and I am rector of the cathedral of Santa Fé.

Q. Have you received a subpœna from this court requiring your attendance as a witness?

A. I received it about 20 minutes ago; I just had time to get up and come up here.

Q. Have you brought the records specified in that subpœna?

A. I have not for the reason that I did not have time enough to look over the books which are specified, and the next thing is this, that the books are the personal property of the church and I am required by the authority before I will bring the books as they never asked for what they want them; our books are not indexed, and it is a very hard to find the things you want because Mr. Sena and Mr. Clancy were allowed to look over the books and they never told me for what they wanted them and though I am ready to bring the books they must give me the information before I come before the judges of the court and they call for me; I do not refuse to bring the books, but I want to know for what they want them; I must look at them more or less; the next thing I am not obliged to carry them and nobody ever offered himself to bring them for me; there are 5, or 6, 8 or 10 books, and it is about the same question they wanted them a while ago, and it was rather a load and nobody helped me.

Q. Is it not a fact that on the other occasion you refused assistance; I did and Mr. Mariano F. Sena did?

A. The books they are a load and you are a lawyer, but not to carry books.

The COURT: We will send our messenger to carry the books for you.

A. They have asked for certificates of baptism and for marriages; Mr. Clancy came Saturday and I was very busy and I told him to come this morning between 8 and 10 and he did not come; it is trespassing on my rights; I am the custodian of the books and I will make the certificates out for them, and I claim this right for myself; whatever the judges decide in this matter, very well; for eight years that I am here and many parties have applied to see the books.

26

The COURT: It is necessary first to prove the record character of the books; after that has been established by the testimony of the witness the certified copies can be furnished and they become competent evidence, but until that is done the certificate itself is incompetent evidence under the law.

A. I have no objection to give the information but you must follow the regular course.

The COURT: We will appoint Mr. Tipton to take charge of the books.

A. Very well, Mr. Tipton is all right.

Adjourned until 2 p. m.

Father ANTONIO FOURCHEGO recalled for the plaintiff:

Mr. CLANCY: May it please the court, Father Fourchegu has produced the books of marriages from the records of the church which is number one, and I offer in evidence from that book of record the record of the marriage of Joseph de Layba dated the first day of August, 1739, of which we will file certified copy as soon as father can make it. (Plaintiff's Exhibit —.)

Objection to this because it is immaterial and irrelevant for the purpose of proving the facts stated by counsel.

He has also produced a book of records of baptisms running from June 1747 to February, 1766, from which book I offer the record of the baptism of Salvador Antonio de Layba, dated February 14, 1760, which appears on the second page of folio 54 of the book and of that father will also make a certified copy also. (Plaintiff's Exhibit —.)

I understand the counsel for the Government admits that the witness is the proper custodian of these records?

27

Mr. POPE: We admit that.

Q. Father Antonio, have you brought with you the record of baptisms between 1739 and 1747?

A. I have not found any book of baptisms before the year 1747.

Q. That is among the books in your custody you have not found any such?

A. No, sir.

Q. Have you any knowledge as to whether such book has been among these records in your custody?

A. I do not know; I never saw it so far.

Q. How long have you had the custody of these records?
A. Seven years and a half at least.
Q. And you have had no knowledge or information during that time of the existence of such a book of baptisms?
A. No, sir.

No cross-examination.

MARIANO F. SENA sworn on the part of the plaintiff testified upon direct examination by Mr. Clancy as follows:

Q. What is your name and where do you live?
A. My name is Mariano F. Sena and I live in Santa Fé.
Q. Are you the plaintiff in this case?
A. Yes, sir.
Q. How do you claim to be interested in the grant the confirmation of which is sought in this case?
A. By deed given to me by Salvador de Leiba.
Q. Is that the only deed that you have?
A. I have another deed of Maria Antonia Leiba de Ramirez and Salvador de Leiba.
Q. Have you these deeds with you?
A. Yes, sir; I have the originals.
Q. Produce them, please?
A. That is the deed of Salvador de Leiba and this is the deed of Maria Antonia Leiba de Ramirez.

I offer these deeds in evidence, copies of which are already on file in the case. (Plaintiff's Exhibits "D" and "E.")

Q. Where did Salvador Leiba live when he made you this deed?
A. When I first saw Salvador Leiba on this transaction I saw him at Peña Blanca in the county of Bernalillo.
28 Q. Where does he live now?
A. He is dead now.
Q. Do you know when he died?
A. I could not state positively when he died; he must be dead a year or more.
Q. About how old a man was he?
A. He claimed to be about 56 when I saw him; something like that when I bought his interest from him.
Q. Did you ever have any conversation with him with regard to his family, his ancestors?
A. Yes, sir; I had several conversations with him.
Q. State as near as you can what he told you with regard to his family?

Objection to that because it is irrelevant and incompetent and hearsay and not the proper method of proving genealogy.
Taken subject to the objection.

A. I went to Peña Blanca some time in the early part of the month of August, 1896, I believe; I went there for the purpose of seeing Salvador Leiba; when I purchased I told him I wanted to buy his

interest in the Jose de Leiba grant; he said he would sell me his interest in the grant; I told him that before I wanted to buy his interest in the grant I wanted to know who his father was; he told me that his father was Juan Angel Leiba; then I asked him who his grandfather was, and he said that *he* grandfather was Salvador Leiba; then I asked him who the father of Salvador Leiba was and he gave the name of Simon Leiba; I asked him if he knew that there was a grant in the county of Santa Fé that belonged to the Leiba family or to the heirs——

Objection to this; this does not give the genealogy; I want to renew the objection to this part of the testimony as being hearsay and incompetent and no proper foundation has been laid for it, he not being a member of the family of the grantee.

Taken subject to the objection.

A. Of Jose de Leiba.

Mr. REYNOLDS: I understand this testimony goes to the question of the grant, not the genealogy, by verbal conversations be-
29 tween this claimant and his grantor, and does not go to the question of genealogy.

Q. What did he say to you then?

A. He told me that they were heirs to a certain grant situated at La Cienega, sometimes called Puebloto de los Leiba; and I made arrangements with Salvador Leiba to come to Santa Fé and to talk to my attorney who at that time was James W. Vroom; when he came to Santa Fé he came in August I believe, it was between the 12th and 17th of August; I do not remember exactly the date; I can give the exact date by looking at the deed if the court will allow me. I met Salvador Leiba the 16th day of August, 1895, when he deeded his interest in the grant to me.

Q. State whether or not you asked him and whether he told you who were the parents or the father of Simon de Leiba?

Same objection as heretofore made.

A. I believe he said that his great-grandfather was Jose de Leiba.

Q. Simon de Leiba was this man's great-grandfather?

A. Simon was the grandfather of Salvador Leiba.

Q. I asked you whether he told you who was the father of Simon de Leiba?

A. The father of Simon de Leiba was Jose de Leiba he told me.

Q. Did he give you any information as to whether his father, Juan Angel Leiba, had any brothers or sisters?

A. Yes, sir.

The same objection.

Q. What did he tell you as to that?

A. He told me that his mother, Maria Inez Apodaca, who was living at Gallegos, I think either in Bernalillo or Santa Fé county; I do not know which one, it is between the two counties, and I went

and saw this lady, Maria Inez Apodaca, and she told me that she was married to Juan Angel Leiba.

Q. Do you know whether Maria Inez Apodaca is living or dead?

A. She is dead.

Objection to this because it is hearsay and immaterial and no proper foundation has been laid for it.

30 Q. What did she tell you about that?

A. She told me that she had one child from Juan Angel, and that was Salvador, and Salvador is the man I bought from; he was living at Pena Blanca at that time.

Q. What was asked about whether there were brothers and sisters of Juan Angel?

A. No, sir; she did not have any more; he was the only child she had by Juan Angle, her husband.

Q. If I understand you right you are speaking of the first Salvador?

A. I may be mixed; there are two Salvadors, one is the man I bought from and the other Salvador is the son of Simon.

Q. Who was Maria Antonio Leiba de Ramirez the daughter of?

A. She is the daughter of Salvador Antonio.

Q. Which Salvador is that, the first one, or the last one?

A. The first one.

Q. Do you know whether Maria Antonio Leiba de Ramirez is living or dead now?

A. She is dead.

Q. From whom did you learn that Maria Antonio Leiba de Ramirez belonged to this family?

A. From Salvador Leiba.

Q. Did you ever hear from any one connected with the family of a person named Josefa Leiba?

A. Yes, sir.

Q. Who was she if you learned?

A. Josefa Leiba was the daughter of Salvador Leiba, the first, I believe they used to call him.

Q. What relation was she then to Maria Antonio Leiba de Ramirez?

A. I think that they were sisters if I am not mistaken?

Q. When did you get that information and from whom?

A. From Salvador Leiba; if the court will allow me in the first place I asked him if he knew to give me that names of the children of Salvador Leiba who was his grandfather and he gave me the names of the children of Salvador Leiba who was his grandfather and he gave me the names of the children of Salvador Leiba; he told me that Salvador Leiba was married to Maria Francisca Lovato and they had Manuela, Josefa, Juan Angel and another one which I do not remember; at that time I took a memoranda of the names that he gave me and when I came back to Santa Fé before I

31 made this purchase I went to the church records and in order to satisfy myself that I was buying from the right people I found the church records and found what Salvador, the second, had

told me was the truth, then I proceeded to buy the interests of Salvador Leiba and Maria Antonio Leiba de Ramirez; that is how I came to find out who the children and Salvador Leiba was.

Cross-examination by Mr. POPE:

Q. Mr. Sena, this genealogy that you have testified about was secured from Salvador Leiba?

A. Yes, sir.

Q. And it was upon that information that you purchased from Salvador?

A. Yes, sir; not exactly on that, and the church records.

Q. That is the information you purchased on?

A. Yes sir; and from information from Maria Antonia Leiba de Ramirez.

Q. You purchased on information from Salvador Leiba and from Maria Antonia Leiba de Ramirez?

A. Yes, sir; and a power of attorney from her too.

Q. Not had any conversation with her at all?

A. No, sir.

Q. You never talked with her about it?

A. No, sir.

Q. When did Salvador Leiba die?

A. I was not present when he died.

Q. Will you please state your best recollection about it?

A. He died in Santa Fé in a little house next to Fairview cemetery; he died there.

Q. How long ago?

A. I cannot say exactly; it may be two or three years.

Q. Did you not say about a year ago?

A. I said a year or more; one or more years.

Q. You won't say one or two?

A. It may be one year, or one month, or five years.

Q. You think it might be ten months?

A. It might be one month; it might be ten months, and it might be a year.

Q. You do not know whether it was two years or five years?

A. It might be three years or one month that he died.

32 Q. He lived here in Santa Fé?

A. Yes, sir; most of the time.

Q. Did you see him dead?

A. No, sir; I saw when his funeral took place.

Q. How long was it before you made this purchase when Mr. Vroom and you went out there?

A. Four or five years; something like that.

Q. It would be four or five years would it?

A. I could not state exactly when he died; he died after I made the purchase.

Q. How long after you made the purchase?

A. Maybe a year or more.

Q. Did he die prior or subsequent to 1897?

A. I could not answer that question because I do not know when he died; Jose Maria Garcia, the justice of the peace, told me that he died.

Q. You filed a suit in the district court involving this property?

A. Yes sir.

Q. That case was set for hearing in 1897, was it not?

A. I do not remember what year it was.

Q. And it was dismissed last October?

A. Yes, sir; it was dismissed.

Q. Now, do you remember when that suit was filed?

A. No, sir; I do not remember; I can tell you by looking at the records.

Q. This suit was filed in September, 1896, was it not?

A. I can tell by looking at the records.

Q. I will get you to look at this complaint and state whether it was not filed September 27th, 1896?

A. Yes, sir; it was filed September 25th, 1896.

Q. Was Salvador Leiba living or dead at the time you filed that suit?

A. I do not know.

Q. You do not pretend to know?

A. I know that Salvador Leiba is dead.

Q. He may be living?

A. I know that Salvador Leiba is dead.

Q. In that suit Mr. Sena you made an affidavit for continuance in which you made certain statements upon which you based a motion for continuance; I will get you to look at that signature attached to that affidavit (hands affidavit to the witness) and state whether or not that is your signature?

A. Yes, sir; that is my signature.

33 Q. Did you swear to that before Atanasio Romero?

A. Yes, sir.

Q. At the date you signed that affidavit, was or was not Salvador Leiba living?

A. I do not know?

Q. You said a few moments — that you in a conversation with Salvador Leiba made about this matter that you secured information from Salvador?

A. Yes, sir.

Q. You said a while ago that you had no conversation with Maria Antonia Leiba de Ramirez?

A. I never had any conversation with her.

Q. In this affidavit unfortunately you state that at the time of this purchase: "that one of said heirs from whom said purchases have been made, Maria Antonia Leyba de Ramirez, gave affiant definite information as to her direct lineal descent from said Jose de Leiba who was her great-great-grandfather; that she informed affiant that she was the daughter of Josefa Leyba, who was the child of Salvador Leyba, who was the son of Simon Leyba, who was the son of the original grantee; that affiant expected to have the evidence of said Maria Antonia Leyba de Ramirez to prove her descent

aforesaid and that of her cousin, Salvador Leyba, from whom he also purchased, from said original grantee, but since the last term of this court, and in October last, she has died;" did you make that affidavit?

A. Yes, sir.

Q. Did you swear to it?

A. Yes, sir.

Q. And you now swear that you had no conversation with her?

A. Yes, sir; I want to explain how that conversation took place.

Q. You now swear that you had no conversation with her whatever?

A. Yes, sir; I will explain to the court how that conversation took place; when I bought the interest of Maria Antonia Leyba de Ramirez she gave a power of attorney to her son, Augustive Ramirez, with whom I had all dealings.

Q. Is that all the explanation you have to make about it?

A. Yes, sir.

Q. Who did you say Salvador Leyba told you was the
34 father of this Maria Antonia Leyba de Ramirez?

A. Her father was Salvador Leyba.

Q. How was she related to this Salvador Leyba with whom you had this transaction?

A. Maria Antonia Leyba de Ramirez was the daughter of Josefa Leyba, and Salvador might have been his first cousin or something like that.

Q. Salvador might have been his first cousin?

A. Yes, sir.

Q. You do not pretend to know or state facts?

A. I only know what Salvador told me.

Q. And your information was then that Maria Antonia Leyba de Ramirez was the daughter of whom?

A. I can refresh my memory.

Q. Well, go ahead and state what you know?

A. Salvador had so many children, the first Salvador he had Manuela, Josefa, Juan Angel, and another one whose name I cannot remember, but I can give you the name if you will allow me to bring my minutes.

Q. You kept minutes of this conversation did you?

A. Yes, sir; of the genealogy.

Q. Who was the mother or father of Maria Antonia Leyba de Ramirez?

A. I cannot state who she was, but if the court will allow me to refresh my memory on that.

Q. Did you not state on your direct examination who she was?

A. She might have been Josefa.

Q. She might have been the mother of Salvador, might she not?

A. No, sir.

Q. Did you not state on your direct examination that Salvador was the son of Juan Angel and Maria Inez Apodaca?

A. Yes, sir; but there is another Salvador; the first Salvador is the father of this second Salvador.

Q. Did you not state on your direct examination that Maria Antonia Leyba de Ramirez was the daughter of Salvador?

A. If the court will allow me to refresh my memory; I do not recollect now; Salvador Leyba had children, one named Manuela, and one Juan Angle, and one Josefa and one I do not remember; I can refresh my memory by looking at my minutes.

35 Q. Can you not state without refreshing your memory?

A. No, sir.

Q. Did you not state on your direct examination that she was the daughter of Salvador Antonio Leyba?

A. Yes, sir.

Q. You said that on your direct examination, did you?

A. I might have said it; yes, sir.

The COURT: The record will show whether he did answer that way or not.

A. That is a mistake; I may have made a mistake, but I will refresh my memory.

Q. Did you not state on your direct examination that Maria Antonio Leyba de Ramirez and Josefa Leyba were sisters?

A. I may have said that; I may have been mistaken.

Q. Well, it is the truth?

A. It was a slight mistake if I told the truth.

Q. The truth of the matter is that you cannot tell without looking at your notes?

A. I can tell the most of it without looking at my notes, except on that point my memory is not refreshed.

Q. It was from Salvador Leyba that you bought from?

A. Yes, sir.

Q. Now, how was Maria Antonia Leyba de Ramirez related to this last Salvador Leyba?

A. I do not know how they are related.

Q. How long had Salvador Leyba lived in Santa Fé at the time of his death?

A. I think that he came from Pena Blanca shortly after I bought his interest.

Q. Where did he live?

A. He lived in that house out at Fairview cemetary, right by the penitentiary; he moved into that house.

Q. Do you think he lived here as much as a year after he moved from Pena Blanca?

A. I think he moved here in 1896; I could not state exactly how soon he came from Pena Blanca, but he came here, I think in the month of August.

Q. You spoke of coming back from Pena Blanca after negoticating with Salvador for the purpose of consulting with Mr. Vroom, your attorney,

A. Yes, sir.

36 Q. When did you employ Mr. Vroom as your attorney in this matter?

A. I did not exactly employ him; I will tel- you how Mr. Vroom and I became connected in this case?

Q. Go ahead?

A. Mr. Vroom and I went together to buy this interest, and he was experienced with laws and the customs of the country and I had to consult with him all the time, besides that he always advised me as to the church records and find out these people that Salvador gave us as to his father and grandfather and if I was satisfied if the records of the church were all here of the man I bought these interests from, and Mr. Vroom advised me to buy these interests, and then we came back to Santa Fé after buying it and then we bought it; I looked at the recorss and found all the people were there.

Q. At that time the turquois people were taking out considerable turquois down there?

A. I do not know.

Q. You knew at that time that they made a strike down at the turquois mines about that time when you and Mr. Vroom decided to buy the interest?

A. I do not know whether we knew about that or not; I do not remember.

Q. You had been down there for the purpose of finding out?

A. Yes, sir; but some people were there that would not let us near the mine; Mr. Vroom and Mr. Purdy and Mr. Jones and myself.

Q. Mr. Vroom was along?

A. Yes, sir; he was along.

Q. Mr. Purdy was he in the case then?

A. Not that I know of.

Q. He went along with you?

A. Yes, sir; he came along as a friend.

Q. He was a friend in the case?

A. Yes, sir; we went on a picnicking that day.

Q. Since then you have had no assistance in the case?

A. No, sir; Mr. Clancy here is.

Q. You had Marcos Costillo looking up testimony for you?

A. You can call him and ask him.

37 Q. You had an arrangement with Marcos Costillo to look after witnesses for you?

A. Yes, sir; I asked Marcos when he was coming out of the district court to find Mr. Francisco Romero and asked Marcos if he would go down and see Francisco Romero and ask him to come up to my office; that I wanted to see him about the Leyba grant and that I would pay him as much as the United States pays for witnesses.

Q. And Mr. Costillo went to see this witness?

A. I suppose so; I do not know.

Objection to this as it is not cross-examination. Sustained.

Q. Do you know where the turquois property is as claimed by Mr. McNulty or the American Turquois Company?

A. Yes, sir; I believe I do Mr. Pope more or less.

Q. It is the same place you went with the other parties?

A. It was our intention to go there; we were passing by the mine and we went up there and looked over it.

Q. Was that before or after you purchased?

A. I think after we purchased; I do not remember right.

Q. You knew of these turquois mines being there?

A. Yes, sir; we were down there at the spring, the Ojo del Coyote; Mr. Vroom, Mr. Jones, Mr. Purdy and myself went out to that spring; we were passing by; we looked at it above the dump.

Q. What Mr. Jones was that?

A. The attorney from Las Vegas; I do not remember what his initials are.

Q. And you think that was after you purchased?

A. Yes, sir.

Q. The grant you claim here includes all these turquois mines does it not?

A I believe the boundaries includes it.

Q. You understand these mines are within the claim as you claim it?

A. I understand my claim is——

Objection to that. Sustained. The extent of his interest is well understood; we would probably assume that the mining company's properties are of great value.

38 Q. And it was at that time was it not that you first learned of the existence of this grant?

A. No, sir.

Q. At the time that you and Mr. Vroom and Mr. Jones and Mr. Purdy made this visit you did not know of the existence of the grant before that?

A. Yes, sir.

Q. Where did you get it from?

A. I got it from Mr. Purdy; Mr. Purdy told me that he was looking up the, if I remember right, southern boundary of the Sebastian de Vargas grant or something like that; that must have been a year or so probably before I bought.

Q. That was when you first heard of the existence of the grant?

A. Yes sir.

Redirect examination by Mr. CLANCY:

Q. How many different conversations did you have with Mr. Salvador Leyba about his family?

A. I could not state exactly; I had many conversations with Salvador; quite a good many.

Q. At the time you had such conversation with him was there any one else present?

A. Yes, sir; when I bought from Salvador Leyba I had a conversation with him in my house and we walked over to my brother's house, Jose Sena, who was a notary public and Manuel Baca y Campos and my brother, Jose Sena, were present there, for he was a notary public, and Salvador recited to me who their fathers and grandfathers were.

Q. Have you here the memoranda which you made of the facts given you by Salvador Leyba about his family?

A. No, sir; it is in my house.

Motion to strike out all the testimony of this witness for the reason that the witness is the complainant in the case and interested in the confirmation of the grant, and it does not prove the genealogy of the family of the grantors.

MANUEL BACA Y CAMPOS sworn on the part of the plaintiff testified upon direct examination by Mr. Clancy as follows:

Q. What is your name, age and place of residence?

39 A. My name is Manuel Baca y Campos; age 52 years, residence Santa Fé.

Q. Are you acquainted with Mr. Mariano F. Sena?

A. Yes, sir.

Q. Were you acquainted with a man named Salvador Leyba in his lifetime?

A. Yes, sir.

Q. Do you know whether he is living or dead?

A. I have known that he is dead.

Q. Do you remember about how long ago he died?

A. I do not remember well; I think about three years ago; two or three years ago.

Q. Do you recollect whether you were ever present at a conversation between Salvador Leyba and Mr. Sena concerning the sale by Leyba to Sena of an interest in a grant?

A. I remember something.

Q. Examine this paper and state if this is your signature (Plaintiff's Exhibit D)?

A. That is my signature (points to the signature of the witness).

Q. State if you can recollect what took place in that conversation and what was said by Leyba?

The same objection, immaterial, irrelevant and incompetent, hearsay, and no proper foundation has been laid for it, and it is not competent evidence in any respect.

A. I was working at Jose Sena's when Mariano Sena and this man Leyba called me to sign that document or transfer as a witness, and I signed it, and Mariano Sena asked Salvador Leyba if there were any other heirs to that interest that he had bought and he said that Jose Leyba was the original party to that grant, and that Simon Leyba was a son of this man Jose Leyba. Salvador Leyba was a son of Simon Leyba, and that Jaun A-gel was a son of Salvador Leyba and Salvador Leyba was a son of Juan Angel; that is all I heard.

Q. Who if any one else was present when he told this?

A. Mariano F. Sena and Jose Sena, myself, and Salvador Leyba; I do not think there was anybody else.

40 Q. When Maria F. Sena asked him if there were any other heirs did he mention any other heirs besides himself?

A. He only mentioned these parties that I have mentioned.

Cross-examination by Mr. POPE:

Q. Are you related to Mariano F. Sena?
A. Yes, sir.
Q. What is your relationship?
A. I think I am related in the third degree.
Q. Were you working for the Senas at that time?
A. I was working for Jose Sena, a brother of Mariano.
Q. You had no interest in this transaction did you?
A. No, sir.
Q. You were simply called as a witness to this deed?
A. Yes, sir.
Q. You are living in Las Vegas now are you not?
A. No, sir.
Q. Where are you living?
A. Santa Fé.
Q. You have had no occasion to remember it since then have you?
A. No, not until now that my attention has been called to it.
Q. You have not talked to anybody about the matter since that time have you up to the present time you have not talked to anybody about this matter have you?
A. Yes, sir; I had talked before being sworn.
Q. That is within the last few days?
A. Yes, sir; I think so.
Q. You had no occasion between that time you witnessed this paper and the time you talked about it a day or two ago, did you?
A. No, sir.
Q. You said you talked with persons about your testimony within the last few days; who have you talked with?
A. You mean with regard to the testimony I was to give?
Q. Yes, sir?
A. I did not talk to anybody about the testimony; I was only talking that I was to come here to testify as to being a witness that I took.
Q. Between that time up to the present you have never talked to anybody about what you heard?
A. No, sir.
Q. Were you in Santa Fé when Salvador Leyba died?
A. I think I was.
Q. Do you remember when he died?
41 A. I do not remember when he died; I knew that he died.
Q. You did not attend his funeral?
A. No, sir.
Q. How long was it after this transaction to which you were a witness?
A. Perhaps two years afterwards; I am not certain.
Q. You think it was some two years do you?
A. Perhaps, more or less.

MAY 1ST, 1900.

MARIANO F. SENA recalled for the plaintiff by Mr. Clancy:

Q. Since the adjournment of the court yesterday, have you been able to refresh your memory as to the information you received from Salvador Leyba concerning Maria Antonia Leyba de Ramirez and who her mother was?

A. Yes, sir.

Q. Can you now state what that information was which you received from Salvador Leyba?

A. The information I received from Salvador Leyba was that Josefa was the mother of Maria Antonia Leyba de Ramirez; she had 3 children, Josefa, Jesus and Apolonia; Josefa was the mother of 3 children; he informed me that Josefa was not married who had these 3 children and afterwards she was married to a man named Jose Cleto Rodriguez.

Q. Did she have any children by her husband?

A. Salvador informed me that she had no children from Jose Cleto Rodriguez.

Cross-examination by Mr. POPE:

Q. Have you your notes here from which you refreshed your memory?

A. Yes, sir.

Q. Let me see them please?

A. This is the book that I kept the notes in (hands book to Mr. Pope) that is the memorandum if the court will allow me to examine it when I had the first conversation with Salvador Leyba before I made the purchase.

Q. How long was it before you made the purchase that you made this memorandum?

A. I made the memorandum first before I made the purchase; probably it must have been a month or two; one month or two months, something like that.

42 Q. Where was this?

A. Pena Blanca.

Q. Who did you say was the mother of Maria Antonia Leyba de Ramirez?

A. Josefa.

Q. Among these three children you have mentioned here, I do not see Maria Antonia Leyba de Ramirez mentioned?

A. I took it down as Antonia; but her name was Maria Antonia; some used to call her Antonia and some Maria Antonia.

Q. You have this Antonio?

A. It is Antonia; some times I make an *o* like an *a*.

Mr. POPE: We desire to offer in evidence the depositions taken February 20, 1900, before Judge Stone, in the Federal building, Santa Fé, New Mexico, in this case. (Defendant's Exhibit A.)

Objection to these deposition- unless there is some further showing of facts at this time to make them admissible under the rule of the court; which says all witnesses for either party shall be exam-

ined in open court; I am personally acquainted with one of the witnesses who is not able to attend but who was here in town yesterday.

The COURT: We are of the opinion that that question cannot now be gone into; that rule has been complied with we think.

Mr. CLANCY: I ask that the Government produce Nasario Gonzales for the purpose of cross-examination who was not included in the original notice. (Motion and affidavit to suppress depositions, marked No. 1.)

SUSANO LEYBA sworn on the part of the Government, testified upon direct examination by Mr. Pope as follows:

Q. State your name?
A. Susano Leyba.
Q. Where do you live?
A. At the present I live in Cerrillos but have been residing in La Bonanza; my residence is at La Bonanza; I was raised in Bonanza.
Q. How long since you left Cerrillos?
A. 8 years.
Q. Where did you say you were born, or did you saw; where did you live from the time you were born to the time you went to Cerrillos?
43 A. I was brought up in Bonanza and I was married and lived there after I was married until I went to Cerrillos.
Q. How old are you?
A. 66.
Q. Do you know where this gentleman, Mr. McNulty, lives?
A. Yes, sir; I know him for about a year or more.
Q. Do you know where the American turquois mines of which he is the manager are located?
A. Yes, sir; at Cerrito Palado.
Q. How far is Cerrito Palado from Bonanza where you live?
A. It may be 2 miles or a mile and a half.
Q. How long have you known the Cerrito Palado?
A. As far as I can remember.
Q. Do you know where the settlement of La Cienega is from Bonanza?
A. It may be perhaps a mile and a half.
Q. How long have you known the settlement of Bonanza?
A. Always.
Q. Do you know where the old place of San Marcos is, the old pueblo?
A. Yes.
Q. How long have you known that?
A. As far back as I can remember.
Q. How far is that from Bonanza where you live?
A. Perhaps 8 miles and a half or a little more.
Q. Do you know where the plains of Los Cerrillos are?
A. Yes, they are up above Cerrillos.
Q. In what direction are they from Bonanza?

A. They are to the west.
Q. To the sunrise *ro* to the sunset?
A. To the west, the sunset.
Q. Where are they with respect to this Cerro Palado you spoke of?
A. From Bonanza to the south.
Q. Is there a plain, level country, for many miles towards the sunrise from this Cerro Palado?
A. Yes, there is.
Q. What are these plains?
A. They call them the plains, the pasture plains.
Q. Have you or not heard these called the plains of Los Cerrillos?
44 A. The llanos of La Bonanzo.
Q. Do you know a spring north of San Marcos called the coyote spring?
A. Yes.
Q. How long have you known that?
A. As far back as I can remember.
Q. Are you acquainted with the country around in between that spring on the north and San Marcos on the south and La Bonanza on the north and west?
A. I do not know about any lands there; I have never known any lands there.
Q. I mean are you acquainted with the country?
A. No, I have not seen anybody there with farms or anything of the sort.
Q. I mean are you acquainted with the country?
A. Yes, I know it all very well.
Q. How long have you known that country and the country around towards the east of the Cerro Palado?
A. As far back as I can remember.
Q. Did you ever pasture on that tract?
A. Yes, sir; over those plains for a good many years for the Delgados.
Q. What was your age when you used to pasture over there?
A. I guess I was less than 14, or 12 or 13 years from that time up to the time I was married and even after I was married.
Q. You pastured for the Delgados?
A. Yes, for the late Mr. Manuel Delgado.
Q. Any one else pasture there at that time?
A. Yes, there were herders like myself but only herders.
Q. Who were they pasturing for?
A. For other parties from Los Tanques and La Cienega.
Q. At the time you were down there first, did you ever hear of a grant covering that country called the Jose de Leyba grant?

Objection as leading.

A. No, sir.
Q. Did you ever hear of any other grant down there at that time covering this land?
A. No, sir.

45 Q. Did you ever of any one claiming such a grant down there?

A. *Bo.*

Q. Did any one ever try to interfere with you when you were pasturing?

A. No, never.

Q. I believe you said your name was Susana Leyba?

A. Yes.

Q. Where did your father live?

A. In Bonanza.

Q. How old were you when he died?

A. I might have been 24 years old.

Q. Did you or your father ever claim an interest in a grant down there called the Jose de Leyba grant?

Objection as irrelevant, immaterial and incompetent. Taken subject to the objection.

A. No, I never knew anything.

Q. Do you know any other members of the Leyba family living in this country?

A. I only know my relatives who live in Las Vegas, a brother of mine and his sons.

Q. Did you ever hear of any members of the Leyba family living at Pena Blanca?

A. No.

Q. Or any relatives of any members of the Leyba family that you ever knew claiming an interest in this grant?

A. No, I do not know.

Q. Those people that you spoke of as pasturing down there when you were a boy, state whether or not they claimed that as a grant?

A. No.

Q. Did they claim it as their property or how did they claim it if at all?

A. I do not know.

Q. How was that regarded as to being public pasture ground or otherwise at that time?

A. As common pasture.

Q. When you were down there pasturing was any one living on this tract?

A. No, nobody; I did not know anybody.

Q. Any one planting on this tract?

A. No.

Q. When you first went there were there any ruins of houses or anything of that kind on this tract?

A. No, there was nothing.

Q. What was the size of that coyote soring that you referred to?

A. It is a very small spring.

46 Q. Can you plant from or irrigate from it?

A. No, it is barely enough for the shepherds for the use for drinking and not enough then they have to dig the spring out.

Q. You say there were no ruins there at that time; were there

any evidences of people having planted there or anything of that kind, old irrigated ground?

A. No, there was nothing, and to tell you the truth there is no place for them to plant on.

Q. What about there being *monte* down there?

A. Very little; there are a few spruce trees.

Q. When you first came there were there any there?

A. No.

Q. Did you ever hear of an arroyo down there neat the coyote spring called the Arroyo del Oregano?

A. No, I do not know it.

Q. Did you ever hear of a questa called the Questa del Oregano?

A. No.

Q. Did you ever hear of an arroyo called the Arroyo of the Questa del Oregano?

A. Nothing.

Q. Have you ever heard of such an arroyo or questa down there since then?

A. Not as far back as I can remember.

Q. Did you ever hear of an Arroyo de la Piedra called by that name?

A. Yes, the Arroyo de la Piedra is below; I know that arroyo.

Q. Did you ever hear the Arroyo de la Piedra called the Arroyo del Oregano?

A. No.

Q. Was it ever called that when you were a boy down there?

A. No.

Q. What was it called?

A. It was called the Arroyo de la Piedra, and this other one was called the Arroyo Gallina.

Q. Were there only two?

A. I know that from the Ojo del Coyote there is another canada that comes into the Arroyo de la Piedra also.

Q. What is the name of that arroyo?

A. That is called the Canada de los Arroyos; that is the same arroyo

Q. Did you ever hear down there of the lands of Juan Garcia de las Rivas when you were a boy, or since?

47 A. No, I never heard them mentioned or called.

Q. Did you ever hear of the lands of La Cienega called the lands of Juan Garcia de las Rivas?

A. No.

Q. When you were a boy did you know where the old road from Cienega to Galisteo ran?

A. Yes.

Q. Where did it run with respect to the turquois hill, the Cerro Palado?

Objection as being immaterial to anything in issue in this case. Taken subject to the objection.

A. To the east.

Cross-examination by Mr. CLANCY:

Q. Were you ever acquainted with Serafin Ramirez?
A. Very little.
Q. You had some acquaintance with him?
A. Yes, I had some acquaintance.
Q. Did you ever know his wife?
A. No.
Q. Did you ever hear who she was?
A. No, I never heard her mentioned; I did not know her.
Q. Have you ever known a man named Salvador Leyba?
A. No.
Q. Have you ever known a man named Jose Aguilar?
A. No.
Q. Have you ever known a man named Jesus Leyba?
A. No.
Q. Have you ever known any Leybas except those of your own family?
A. No.
Q. Do you know whether there are any other Leybas in New Mexico?
A. Only my relatives at Galisteo.
Q. Did you ever hear of a man named Juan Angel Leyba?
A. No.
Q. Did you ever hear of a man named Salvador Antonio Leyba?
A. No.
Q. Or Simon Leyba?
A. No.
Q. If there ever were any such people they are no relatives of yours, are they?
A. No, in my precinct these people never lived.
Q. How old were you when you said you went to Bonanza to live?
A. I was from 8 to 10 years old; I was not over that; up to 1890 I lived there.
Q. You went there to live with your father and mother did you?
A. With my father and mother.
Q. Did they have a house there?
A. No, we lived at the house of the Delgados?
48 Q. What was the name of your father?
A. Cayateno Leyba.
Q. What was the name of his father if you know?
A. Juan Ignacio Leyba.
Q. Where is this place that you call Bonanza?
A. It is over there at the place where the house of the Delgados was, or that place where Cerrillos is now is La Bonanza.
Q. When was that place first called Bonanza?
A. Since the Americans came there, since these miners at Cerrillos came there.
Q. You said that you never heard of the Jose de Leyba grant?
A. No.

Q. And you never heard of any other grant down in that section?
A. No.
Q. Did you never hear of a grant in that vicinity which was called the grant of Alonzo de Aguilar?
A. No.
Q. Did you ever hear of a grant that was made in that vicinity to Jose Miguel de la Pena?
A. No.
Q. Did you ever know of a man that lived in that section of the country whose name was Pedro Pino?
A. I do not remember.
Q. Did you ever hear of a grant in that vicinity which was made to Clato de Miera and Baustino Pino?
A. No.
Q. Did you ever hear of a grant in that vicinity which was called the Sitio de Juana Lopez grant?
A. Not a grant, the Sitio de Juana Lopez, but not a grant.
Q. Did you ever hear of a grant in that vicinity which was called the Sitio de los Cerrillos?
A. Not a grant.
Q. Did you ever hear of any grant that was called the grant to Los Cerrillos?
A. No, never heard it mentioned.
Q. Did you ever hear of a grant that was called the Pueblo Viejo de la Cienega?
A. No.
Q. Have you ever heard of a grant that was known as the Sebastian de Vargas grant?
A. No, I have not heard that name mentioned.
Q. Did the Delgados own any land out there where you say you live?
49 A. Yes.
Q. Were they the owners of these lands?
A. They were the owners of these lands, their father was, Don Manuel Delgado.
Q. How did they have title to these lands?
A. I do not know; all I know is that they had eight hundred varas.
Q. What were the boundaries of their lands?
A. They had them at the edge of their fences; they had the place fenced.
Q. Did you ever hear of any lands out in that vicinity called the lands of the Bacas?
A. Yes.
Q. Where were they with reference to the lands of the Delgados?
A. Above.
Q. Did you never hear of a grant out in that part of the country called the San Marcos grant?
A. No.
Q. Did you ever hear anywhere in that part of the country of an arroyo called the Arroyo de los Basquez?

A. No.

Q. I think you have testified that you were acquainted with a road which goes from La Cienega to Galisto; is that correct?

A. Yes.

Q. And where is that road with reference to the lands of the Delgados?

A. It is above.

Q. Do you mean that it is towards the north, or towards the east?

A. To the east.

Q. How near is it to the lands of the Delgados?

A. Where it used to go through to the Cienega it was about 300 or 400 varas.

Q. Did you never hear that that road was the eastern boundary of the lands of the Delgados?

A. No.

Q. Is that the road which Nasario Gonzales made 25 or 30 years ago?

A. No.

Q. Where is the road which he made?

A. I understand that perhaps there is another road there also, but the road that he built is still further up.

Q. That is still further to the west?

A. It is still further up.

50 Q. To the east or to the west?

A. To the east, further away to the east.

Q. Is there a road which goes down towards Galisteo and passes on the west side of the hill where the turquois mines are that you have testified about?

A. That is the same road that I mentioned going straight to Galisteo.

Q. And to the side of the Delgados it runs along between the house of the Delgados and the hill where the turquois mine is, does it not?

A. No; this road goes from the houses that are at the place called La Bonanza and goes up into the plains and then comes down at the ridge where it comes into the Santa Fé road.

Q. I am still talking about the road which goes towards Galisteo, not the one that comes to the Santa Fé road; does not that road go down towards Galisteo between the house of the Delgados and the turquois mine?

A. No.

Q. In which direction is Galisteo from La Cienega?

A. It is to the south.

Q. In which direction is Santa Fé from La Cienega?

A. It is to the east.

Q. Do you know the old road from Pecos to Cerrillos?

A. No.

Q. And you say you are not acquainted with the road that was built by Nasario Gongales?

A. Yes, I know that road that he built there this way.

Q. How far this way; where did you say that road began and to what place does it go?

A. I think more or less about a little over two miles above the house of Don Nasario.

Q. Which way does it go?

A. To the east.

Q. And comes into the road to Santa Fé?

A. No.

Q. If it comes east where does it end?

A. Where it branches off to Galisteo.

Q. Does it still go to the east?

A. From the place where it branches off it goes to the south.

Q. How far east of the house of Don Nasario does it turn to the south?

51 A. About 2 miles more or less I have said.

Q. Was it at that point 2 miles east of his house that he began to make the road, that was where his road begins?

A. Yes, to Galisteo.

Q. How near does the road of Don Nasario go to the houses of the Delgados?

A. It is about 2 miles and a half.

Q. To the east of the house of the Delgados?

A. To the east of the house of the Delgados.

Q. Does it run over on part of the lands of the Delgados?

A. No.

Q. Between the road of Don Nasario running south to Galisteo and the houses of the Delgados, is there not another road which runs in the same direction towards Galisteo?

A. Yes, it is the same road that you are asking me about.

Q. Then there are two roads are there that go *to* together from Galisteo to Cienega?

A. Yes.

Q. One of them was made by Don Nasario?

A. Yes.

Q. And did the other exist before that time?

A. By the same parties that lived in the same precinct; it was their road.

Q. When did you first see it?

A. As far back as I can remember.

Q. This last road that I am speaking about, how near is that to the houses of the Delgados?

A. About a mile or a little more.

Q. Were the houses of the Delgados near the eastern or the western side of their lands?

A. On the eastern side of their lands.

Q. How far were the houses from their eastern boundary?

A. About 500 varas maybe.

Q. Did you know a spring out in that country called the spring of San Marcos?

A. Yes.

Q. How far is that from the lands of the Delgados?

A. It is about more or less 9 miles.

Q. Do you mean 9 miles from the lands of the Delgados or 9 miles from the houses of the Delgados?

A. From the houses of the Delgados to the spring of San

52 Marcos.

Q. How far is it from the spring of San Marcos to the ridge north of that spring which divides it from the next arroyo?

A. It may be more or less five or six miles.

Q. Did you say that you knew an arroyo called the Arroyo de la Piedra?

A. Yes.

Q. The Arroyo de la Piedra which way is that from the San Marcos spring?

A. Towards the sunset.

Q. How far is it from the San Marcos spring to that arroyo?

A. It may be 2 miles and a half.

Q. Do you know the spring which is called the Ojo del Coyote?

A. Yes.

Q. In which direction is that from the San Marcos spring?

A. To the east.

Q. About how far is it from the San Marcos spring to the Ojo del Coyote?

A. It may be two miles, perhaps a little more than less.

Q. That Ojo del Coyote is in a different valley or cañada or arroyo from the one in which San Marcos is in, is it not?

A. Yes.

Q. How far is it from the San Marcos spring to the top of the ridge which divides it from the arroyo where the Ojo del Coyote is?

A. It may be a little over 5 miles.

Q. And you never heard of a grant known as the grant of the pueblo of San Marcos?

A. No.

Q. Did you say that you never saw any ruins of houses near the Ojo del Coyote?

A. No.

Q. Can you remember the first time that you were ever at the Ojo del Coyote?

A. Yes; I was there many times, but I remember.

Q. How old were you when you were first there?

A. I am not certain; I was not over 12 years old, I was herding sheep.

Q. Do you remember when the American army first came here to Santa Fé?

A. Yes.

Q. How old were you at that time?

A. I was scarecely about ten years.

53 Q. Had you ever seen that Ojo del Coyote before that time?

A. Short while afterwards.

Q. And there were no ruins of houses there at all?

A. No.

Q. Are you sure that there were not ruins of houses just above the

arroyo on the high ground a little way back from the place where that spring is?

A. It is true I never saw any.

Q. How long ago is it since you have been at that spring?

A. It is about 8 years, perhaps more, that I passed by.

Q. Did you go along in the arroyo or did you go on the ground outside of the arroyo?

A. Over the road, over the trail.

Q. Does the road run close to the spring in the arroyo?

A. The spring is right by the side of the road.

Q. How deep is the arroyo at that place?

A. It is not deep.

Q. At that place is that arroyo as deep as the height of this room?

A. I do not know it; at the place where the road goes by it is not deep.

Q. Then if the arroyo is not deep at that place you are talking of a different spring from the one I am talking about?

A. No, I am certain I am talking of the arroyo; I know what I am talking about; I know what you are asking me and I know what I am talking about because I know the place well.

Q. As you go down that road in that arroyo is the spring on your right hand or your left hand?

A. Going from this way it is to the right hand and going this way it is to the left.

Q. Did you ever travel around there over that country outside of the arroyo near that spring?

A. Yes.

Q. And at a short distance from that arroyo on the north side have you not seen the ruins of houses?

A. There was a little shanty built there by some shepherds to put their provisions in, but that was not a house; that was a very frail building.

Q. How was it built?

A. They constructed it with rocks.

54 Q. When did you first see that shanty there?

A. It is about 6 or 7 years that I saw it.

Q. Had you ever seen it before there?

A. No, I had not seen it before.

Q. You say that you saw this shanty about 6 or 7 years ago?

A. Yes.

Q. When had you been at that place before that time?

A. I had been out at that place for many years with cattle and animals.

Q. When had you been there last before that time when you saw the little shanty?

A. Even as late as the year 1855 I was there with the Delgados.

Q. How late had you been there before the time when you saw this little shanty made by the shepherds?

A. It was in 1857.

Q. Had you never been there from 1857 until the time when you saw the little house?

A. This house was after 1860.

Q. You said you saw this house about 6 or 8 years ago for the first time?

A. No.

Q. When did you see that house?

A. I saw that house after the year 1860, but I am not certain.

Q. You do not know then when it was that you saw it?

A. I am not certain of the year when I saw it, but I am certain that I saw it, and I am also certain that the house did not stand for over 4 months because it was destroyed after those that built it left.

Q. Do you know who built it?

A. I am not certain who built it because I was not present at the time it was made, but I am certain the boys who worked for Don Jesus Narvais built it for their provisions.

Q. Do you think that the time that you saw that Narvais house was as late as 1870?

A. It is very possible.

Q. May it have been as late as the year 1890?

A. No.

Q. Could it have been as late as the year 1875?

A. I think it was before.

Q. Are you sure it was before that?

55 A. I do not remember well except that I saw a little house; I do not remember the date well.

Redirect examination by Mr. POPE:

Q. Was this shanty that Mr. Clancy asked you about there when you were working for the Delgados?

A. No.

Q. You spoke of the San Marcos spring; how far did you say that was from the Ojo del Coyote?

A. It may be about 2 miles more or less; I am not certain of the distance.

Q. Do you know where the Cerro Palado is?

A. Yes.

Q. Which is nearer, the Cerro Palado or the Ojo del Coyote to San Marcos?

A. The Ojo del Coyote.

Q. About how much farther is it?

A. I do not know.

Q. About how far is it?

A. It may be over 2 miles; about a little more than 2 miles from the Ojo del Coyote to the Cerro Palado.

Q. In going from San Marcos to the Cerro Palado do you not go by the Coyote spring?

A. I have passed that; it is on the public road going from San Marcos as far as I can remember.

Q. Did you ever hear of the pueblo of San Marcos?

A. Yes, I knew it.

Q. Did you ever hear of the lands of the pueblo of San Marcos?
A. I never saw any planted fields or anything at the pueblo of San Marcos.
Q. Since you have known that country has any one claimed the pueblo of San Marcos?
A. No.
Q. Did you ever hear of Nasario Gonzales claiming any lands at the pueblo of San Marcos?

Objection as that matter has been gone over. Overruled.

A. No, I never heard that; I do not know about that.
Q. At what place was it that the Delgados had their ranch?
A. At La Bonanza; at the place called formerly Cerrillos.
Q. Any other people claiming lands there when you were living there?
A. I never heard anybody else mentioned.
Q. Did you ever hear of the Sitio de los Cerrillos?
A. Yes, I never knew it by any other name.
56 Q. Did you ever hear of the Sitio de Juana Lopez down there?
A. Yes.
Q. Where does this road run of Nasario Gonzales with respect to the Cerro Palado, to the sunrise or to the sunset?
A. Towards the sunrise.

Mr. CLANCY: I renew my motion to require the Government to produce the witness- whose depositions have been read, for the purpose of cross-examination; it has been shown that they are actually in attendance on the court.

The COURT: This application did not determine the right of the petitioner to bring them in himself, but we think the Government having introduced them upon notice to the party we cannot require the Government to bring them in for cross-examination.

MAY 2ND, 1900—10 a. m.

PEDRO MUNIZ sworn on the part of the Government testified upon direct examination by Mr. Pope as follows:

Q. Where do you live?
A. Santa Fé.
Q. How long have you lived here?
A. For about 36 years.
Q. Since you have lived here have you known a man named Salvador Leyba?
A. I knew him since the year 1896.
Q. Did you know a man named Salvador Leyba who used to live at Pena Blanca and afterwards lived here?
A. Yes.
Q. Is he living or dead?
A. He is dead.
Q. When did he die?
A. He died in June, 1898.

Q. Where was he living at the time of his death?
A. Here in Santa Fé.
Q. Were you at his funeral?
A. Yes.
Q. How long had he been living in Santa Fé prior to his death?
A. About 3 years.
Q. Did he leave any family?
A. Yes, two sons.
Q. Where did they live?
A. They are daughters; one of them lives in Santa Fé and the other at Gallegos spring, but one of them is dead already so that only one is alive.

57 Q. Do you know where the turquois mines now worked by Mr. McNulty and his company are located in this county?
A. Yes, I sold them.
Q. Sold them to Mr. McNulty and his company?
A. No, to a Chicago lady, the wife of Mr. Allan.
Q. How long had you known that country down there?
A. I think that I have been in that place for 12 years.
Q. Do you know where the old place of Los Cerrillos or Bonanza is?
A. Yes, old Cerrillos, the name of it was changed to Bonanza recently.
Q. Do you know where the old place called Cerrito de Chamiso is located?
A. There are several chalchihuites as they are called, but the one that is most commonly known is at the plains.
Q. Is that the one that Mr. McNulty's mine is on?
A. Yes.
Q. Is that known as the Cerrito de Chalchihuite?
A. Yes.
Q. Do you know where the plain of Los Cerrillos is?
A. Yes.
Q. Where is that located?
A. It is the plain that runs from this road of Santa Fé and towards the place Dolores and that is to the south of the plain of Los Cerrillos.
Q. Do you know a white plain stretching out eastward from Bonanza to the mountain range, out here some ten or fifteen miles?
A. Yes.
Q. Is that the plain that you have reference to?
A. No, I do not think it is.
Q. What is that plain called?
A. I do not know what they call it, but I do not think that all that valley takes up all this country as far as Santa Fé, they call it Cerrillos.
Q. What is the plain on which this cerrito on which Mr. McNulty's mines are located called?
A. I have known it by the name of the Cerrito de Chalchihuite.

Cross-examination by Mr. CLANCY:

Q. Are you acquainted with the place called the pueblo of San Marcos?

A. Yes.

58 Q. Is there a Cerrito de Chalchihuite west of the pueblo of San Marcos?

A. Yes, it is the same one we are referring to now.

Q. How far is it from the old pueblo of San Marcos to this Cerrito de Chalchihuite?

A. It must be about 3 miles on the northwestern side.

Q. Did you discover the turquois mines that are now controlled by Mr. McNulty?

A. I do not consider myself the discoverer, but there was an old mine or an old shaft and I worked that.

Q. Is there another Cerrito de Chalchihuite directly west from the pueblo of San Marcos?

A. Yes.

Q. Does the road from Santa Fé to Dolores go through the pueblo *fo* San Marcos?

A. It runs very close to it, about a 100 feet to the east.

Q. Leaving Santa Fé to go by that road to Dolores you go on what is known as the Galisteo road, do you not?

A. Yes, at the plain this road branches out away from the road that runs to Galisteo.

Q. That is beyond the Arroyo Hondo, the roads divide, one goes down from San Marcos and the other goes on to Galisteo?

A. They divide beyond the Arroyo Hondo, shortly beyond the point where these roads divide.

Q. Do they cross another road which runs east and west?

A. I think there are two that I know of.

Q. Do you know the road which is known as the old road from Pecos to Cerrillos?

A. Yes.

Q. This road that goes to San Marcos crosses that road does it not?

A. Yes.

Q. That road by which you go to Dolores, what is it usually called from the point where it divides from the Galisteo road?

A. By the na- of Placier road.

Q. Have you ever heard it called the San Marcos road?

A. No, it passes by the spring or near the sprin- of San Marcos.

Q. Do you know a spring in that vicinity called the Ojo del Coyote?

A. Yes.

59 Q. In which direction is that from the Ojo de San Marcos?

A. About 2 miles to the east.

Q. Do you know any spring in an arroyo about 2 miles north of the Ojo de San Marcos?

A. No, I have never known it.

Q. How old are you?

A. I am 45 years old; I was born in 1855.

Redirect examination by Mr. POPE:

Q. Did I understand you that you knew a Cerrito de Chalchihuite about 3 miles west of San Marcos?

A. I said that there was a little cerrito on the plains about 3 miles northwest from San Marcos.

Q. Is that the Cerrito de Chalchihuite which you testified about in your examination-in-chief?

A. Yes.

Q. Which is nearer this Cerrito de Chalchihuite or McNulty hill, the San Marcos spring or the Coyote spring?

A. The Coyote spring.

Q. About how much nearer?

A. About 2 miles.

Q. Is or is not that Coyote spring on the road from San Marcos to the turquois mines north?

A. I have not talked about any road going to Coyote from San Marcos; I have talked about a road going from Santa Fé to the placers.

Q. Do you know of a road going from San Marcos north to the cienega?

A. Yes, there is a road.

Q. Where is this Coyote spring with respect to that road, that is what I mean?

A. I do not think it is over half a mile.

Recross-examination by Mr. CLANCY:

Q. On which side of that road that you have last testified about is the Coyote spring?

A. To the south.

Q. Does not that road from San Marcos to Cienega go in a northerly direction?

A. No, it runs more to the west, between the west and the north.

Q. Can you take a pencil and mark the relative positions of the San Marcos spring and the Coyote spring and this road of
60 which you have last testified?

A. I think it would be a better idea for you to show me a map of that locality and then I could point out the places.

Q. Here is a rough map which shows some of the places you have referred to, some of the roads; there is north marked on it; the road which you say goes from San Marcos to La Cienega, I will ask you if this correctly shows that which is marked on it, and afterwards I will get you to mark the road; this is to the north, here is the city of Santa Fé; this is the Santa Fé river running down in this direction to the southwest; here is the Galisteo road coming out from Santa Fé to the south, dividing at this point as you have described, one road running to Galisteo and the other going to Dolores through the San Marcos land; this is the Galisteo river; here is La Cienega and in here the place called Cerrillos or La Bonanza; here is the pueblo of San Marcos and this line is the old road from Cerros Viejos to Pecos; is that substantially correct?

A. You have not marked the Cerrito de Chalchihuite here; it is about at this point; McNulty's mines are at about this point, marked turquois mines; this road that I am speaking about now runs about northwest passing by this cerrito.

Q. As you have now marked it on this map?

A. Yes, which is marked road.

Q. On which side of that road is the Ojo del Coyote?

A. It is to the south of that road.

Q. At the place which you have marked?

A. Yes, which is marked Ojo.

I will offer this in evidence in connection with his testimony as explanatory of it. (Plaintiff's Exhibit No. 1.)

J. P. McNULTY sworn on the part of the Government testified upon direct examination by Mr. BARTLETT as follows:

Q. State your name, age, residence and occupation?

A. J. P. McNulty; 51 years old, Santa Fé county, Cerrillos is my post-office; miner by occupation.

Q. How long have you lived in Santa Fé county?

61 A. Off and on about 18 years.

Q. You are one of the defendants in this case?

A. Yes, sir.

Q. What connection have you had with the defendant The American Turquois Company?

A. I am acting for the American Turquois Company as superintendent.

Q. How long have you been acting in that capacity?

A. I have been foreman in the first place; I went as superintendent in March, 1892.

Q. You have been acting for them ever since?

A. Yes, sir, different companies or different gentlemen who have taken it, still it is the American Turquois Company, I have been working for them.

Q. What have you been doing?

A. What have I been doing? I have been mining.

Q. Where are the mines of that company located?

A. Between 17 and 18 miles southwest from Santa Fé.

Q. State if you know under what right they are working at that place?

A. The company I understand has bought the property from a Muniz party and it is located as Government property which I put up notices for a patent on one in 1892, I think it was in June, there was a notice for a patent in June, for a patent on the Muniz claim, in June, 1892.

Q. What is the local name of the locality where these mines are being worked; what do the Mexicans call it, the old name for this locality?

A. I could not say what the Mexicans call it; it is the Los Cerrillos mining district.

Q. Do you know the Cerrito de Palado?

A. I heard the Mexicans call them little hills there.

Q. Where the mines are?

A. Yes, sir; but it was called the Cerrillos grant when I went there; that was part of the Los Cerrillos grant as confirmed; it was resurveyed and it threw it off of the hills altogether, the grant was taken off.

Q. Then this locality where these mines are is known by
62 the Mexicans as Cerrito Palado?

A. Yes, sir; that is what I have heard them call it.

Q. When did you first hear of the grant of land known as the Jose de Layba land grant?

A. I never heard of it until after the survey was made; when the Court of Private Land Claims confirmed the Los Cerrillos grant.

Q. When was that?

A. That I could not say whether it was in 1895 or 1896; the survey was made; I never heard of the other grant until afterwards.

Q. Are you acquainted with Mr. Sena, the petitioner in this case?

A. I am personally acquainted with him.

Q. How long have you known him?

A. Well, I knew him off and on for about 14 or 16 years I should think; I met him often.

Q. Were you served with a summons in a case by him involving the Jose de Leyba grant pending in the district court of this county, and if so, when?

A. I think it was somewheres in September, 1896; Mr. *Calncy* here met me in Santa Fé one morning, and he told me, and I told him he did not need to send the sheriff down to serve the papers on me, and afterwards I told him to serve them on General Bartlett for me, he was my attorney.

Q. Have you had any conversation with Mr. Sena, or Mr. Vroom, his attorney, or any other person representing him with reference to this grant?

A. None that I remember of until after the papers were served.

Q. If you had any just state what it was?

A. I had a conversation with Mr. Sena, and with Mr. Vroom, I was personally acquainted with him, and Mr. Sena and Mr. Purdy, and another gentleman I did not know; they said that they had an interest in a grant there; and Mr. Purdy was there; Mr. Purdy represented that he had an office there; and they come over the mesa towards the mine; and they were going to make a break for the property to go up on the mine, and I saw them, and I notified them
to go down I do not remember whether I carried a gun; I told
63 them to come down and they come down all the same; then I shook hands with Mr. Purdy and I told them to come on and I would show them the mine; Mr. Purdy asked me what I was getting out of the mine or something like that and I told him two hundred thousand dollars I am getting out of the mine; well, he says you do not mean that, and I says I do; I says I think we might be getting that much; I says I think I am getting that much; I do not know though out of this turquois mine; and I says Mr. Purdy, what are you doing around here, and he says, we were going up on

the mesa just looking around; that is all the conversation I had with them.

Q. What time was that conversation; about what year?

A. It was about 1895 or 1896; I could not say what year.

Q. The papers were not served on you at this time; it was before you were served with the summons?

A. Yes, sir; quite a time before.

Q. What is the character of the land where these mines are located and in the immediate vicinity, say for a mile in each direction; the character of the surface and the character of the soil and whether there are any trees or grass on it?

A. Very little grass; there is some sage brush, but no trees of any size, no bushes even, very small bushes if there are any within a mile.

Q. It is on a hill?

A. Yes, sir; very few little bushes on the hill.

Q. Is it cultivated at all?

A. No, sir, indeed; there was a gentleman who raised a few radishes and vegetables, and he had to keep sprinkling them to raise them.

Q. Was that close by the mines?

A. Right in the valley in under the hill.

Q. I will ask you whether there is any water standing or running within these limits, within a mile from the mining property?

A. There is none inside of a mile of the mine; I get my water hauled from over a little over 2 miles I think.

64 Q. Two miles from what point?

A. From Bonanza springs.

Q. Is that this way or is it a little west, or between here and the mines?

A. About northwest, something like that.

Q. How long have you known your company and their predecessors in interest in the possession of the mining property there?

A. Well, the Storys were in possession of the property before I went there; I went there in 1892, and they took possession in 1891; that is the year I understand.

Q. Do you know who had it before these years?

A. Yes, sir; his brother was the one that sold it furst.

Q. Do you know how long he had it?

A. I could not say; I do not know.

Q. Has your possession or that of the company ever been interrupted since you have been there, or attacked by anybody except in this suit?

A. None that I know of; the Indians have come there.

Cross-examination by Mr. CLANCY:

Q. I believe you said that in June, 1892, you put up notices for a pattent on the property?

A. Mr. McGraves and myself done so; I think it was in June, 1892.

Q. You have not obtained any patent for the property?
A. My attorney is attending to that.
Q. Why was it that you did not procure a patent in 1892?
A. The company is I understand changing hands so often; I could not say why they do not get it; there are none of the company here; I am representing them.

CLAYTON G. COLEMAN sworn on the part of the Government testified upon direct examination by Mr. Pope as follows:

Q. State your name, age and residence and occupation?
A. Clayton G. Coleman; 59 years old; Santa Fé, New Mexico; I am special agent of the Court of Private Land Claims.
Q. Have you examined the papers in the case now on trial
65 for the confirmation of the Jose de Leyba grant?
A. Yes, sir.
Q. I will get you to state whether or not you have been down on the ground shown in the plat attached to plaintiff's petition in this case?
A. Yes, sir.
Q. State when you did that and for what purpose?
A. I do not remember the exact date; I could not give it unless I had my memorandum, but it was some time during this year.
Q. And for what purpose did you go?
A. In order to satisfy myself in regard to the boundary calls of the grant as called for in the papers.
Q. Did you have with you on that occasion any of the papers, copies of the title papers, or other papers?
A. I had them all with me.
Q. What did you do when you were down there with a view to determining the boundary calls set forth in these title papers as to calling on any parties or otherwise?
A. I called on the oldest people living anywhere in that country and asked them for such information as they could give me in regard to these boundary calls.
Q. Where were these old people living?
A. The most of them were living at Cienega; one was living at Cieneguilla, and one at Pino's ranch, which is in the Sitio de Juana Lopez grant I believe, and two of them were living at Los Tanques, just above Cienega.
Q. Did you visit any of the natural objects set down on the map attached to the plaintiff's petition in this case?
A. Yes, sir.
Q. State what portion of this tract you visited?
A. I traveled along the San Marcos road and I traveled along the road from Cerrillos, part of it, from Cerrillos to Pecos, and in the remainder I could not definitely fix the boundaries.
Q. Were you able by inquiry or otherwise to ascertain the location of the lands of Juan Garcia de las Rivas or any such lands in that vicinity?

Objection as hearsay and not competent.

A. I inquired from all of the old people of whom I have
66 spoken and none of them could give me any information in regard to the lands of Juan Garcia de las Rivas.

Q. Were you able to find any such lands?

Objection for the same reason.

A. I could not find any such lands.

Q. Do the title papers mention the lands of Sebastian de Vargas; I will get you to state whether or not you were able to locate any such lands in that vicinity?

Same objection as the last.

A. I could not find any lands in that vicinity that ever belonged to Sebastian de Vargas.

Q. Did you find any San Marcos road down there?

A. Yes, sir.

Q. Did you travel over that road?

A. Yes, sir.

Q. Where does that road run from?

A. You might say it ran from Santa Fé to San Marcos.

Q. Did you travel over that road; to what extent did you travel over that road from Santa Fé to San Marcos?

A. I did not travel over all that road from San Marcos to Santa Fé, but I did go to San Marcos spring upon that road, but I had before traveled that road; the present road from Santa Fé to San Marcis spring as it leaves Santa Fé is what is known now as the Galisteo road, but in connection with other inquiries it seems that there was another road at one time to Galisteo known as the Galisteo road, and whether that was a portion of the San Marcos road or not I do not know, but in going from San Marcos you travel that road for a distance of probably 8 miles and then the road to San Marcos diverges to the right or in a southwestern direction to the San Marcos spring and the rest of the road goes on to Galisteo, the other branch of the road.

Q. Where does that road leave this city that you say comes to San Marcos with respect to the territorial capitol for instance?

A. It leaves in front of the capitol, on the west side of the capitol; it is the road that goes out by General Easley's residence in this city.

67 Q. Were you able to locate by inquiry or otherwise the old road from Cienega to Galistoe?

A. Yes, sir.

Same objection.

Q. Did you visit the turquois properties of Mr. McNulty when you were down there?

A. Yes, sir.

Q. Did you go to the Ojo del Coyote?

A. Yes, sir.

Q. Where does this old road from Cienega to Galisteo run with respect to these points?

A. A very considerable distance to the east of either one of them, especially the Ojo del Coyote.

Q. How far to the east of the turquois mines does this road run, I am talking about the old road from Cienega to Galisteo?

A. In going from Cienega by the most direct route to Galisteo the road must be four or five miles from the turquois mines.

Q. In what direction?

A. North and east.

Q. And how far to the east of the Ojo del Coyote does it run?

A. I should say 7 or 8 miles.

Q. It diverges towards Galisteo?

A. Yes, sir.

Q. Is there any road running from this road from Cienega to Galisteo to the San Marcos spring by the Ojo del Coyote?

A. Yes, sir; there is an old road there that runs right by the Ojo del Coyote to San Marcos that leaves the road from Cienega to Galisteo; you might leave Bonanza and strike the same road, or you might pass to the north and east of Cerrillos and strike the same road.

Q. Did you hear the testimony of the witness Muniz who testified this morning?

A. Yes, sir.

Q. He testified about a road running from San Marcos northwest some little distance west of the Ojo del Coyote, half a mile or more; do you know that road?

A. Yes, sir.

Q. Where did you go as to that road?

A. I traveled that road and a very old man who lives in that community told me that *me* it was the road which was built
68 by Nasario Gonzales in order to go from Cienega where he lives to go to the Gotero ranch.

Objection to all this as hearsay and therefore incompetent.

Q. Did you have any other information as to the origin and building of this road?

A. Mr. Gonzales told me himself that he built that road.

Objection on the same grounds.

Q. The title papers accompanying the petition in this case which you say you had with you mention as a boundary on the south an arroyo called the Arroyo del Oregano or the arroyo of the Questa del Oregano; did you make any effort to locate that arroyo or that questa?

A. Yes, sir.

Q. Were you able to find such an arroyo or such a questa in that section of the country?

A. No, sir.

Q. What inquiries did you make?

A. I inquired of all the old people as to whether there had ever been such an arroyo and they told me that there had not.

Same objection as the last.

Q. I believe you said you went to the Ojo del Coyote?

A. Yes, sir.

Q. How was that located with respect to the San Marcos spring?

A. I should say it was nearly north of it, about due north, though I am not positive as to that, because I did not go to the San Marcos spring from the Ojo del Coyote; I located the San Marcos spring according to the public surveys and located the Ojo del Coyote by the corners of the public surveys.

Q. And the distance from the San Marcos spring to the Ojo del Coyote is what?

A. I could not say exactly; it is something in the neighborhood of 2 miles I should think.

Q. What divides these two springs from each other?

A. The hills; there is a sort of a plain in between; you go up out of a draw or arroyo where this Ojo del Coyote is, and as you go up the ground is practically level or about level until you get down to san Marcos.

Q. What is the character of this Coyote spring with respect to the amount of water?

A. There is not enough to irrigate; the spring does not run
69 any distance, only a few yards; the water comes up out of the rocks into the bed of the arroyo; you get enough for drinking purposes there.

Q. Where is that spring with respect to the point at which the plaintiff in this case has located on his map the Arroyo del Oregeno?

A. The spring is outside of the boundaries, being south of them.

Q. What as to the existence of any arroyos in the vicinity of this spring north therefrom and at the place put in plaintiff's map as the Arroyo del Oregeno and the arroyo of the Questa del Oregeno?

A. Can you show me the plaintiff's map?

A. Yes, sir (shows the witness said map).

A. In the vicinity of the Coyote spring there is no arroyo, that I can remember. Between the Coyote spring and the San Marcos spring the arroyo in which the Coyote spring is situated empties into an arroyo probably 200 yards or 250 yards possibly below in an arroyo that is called in that country the Arroyo de la Piedra, or the Arroyo de las Gallinas which arroyo I have endeavored to locate accurately upon a map which I have submitted.

Objection to the question as a mere statement.

Q. Are these the only arroyos there?

A. Yes, sir; they are the only arroyos that I saw.

Q. Did you make an investigation or inquiry as to the existence of a questa called the Questa del Oregano?

A. Yes, sir.

Same objection and calls for hearsay evidence and therefore not competent.

Q. To what extent did you inquire as to that?

A. I asked all of the old people that I referred to if they had ever heard of a questa known as the Questa del Oregano and they informed me that they had not.

Same objection.

Q. These two arroyos that you found at that point, did you ascertain by inquiry or otherwise the names of these two arroyos was called and known by in that locality?

A. Yes, sir.

Same objection.

Q. And what were their names?

A. One was known as the Arroyo de la Piedra or the Ar-
70 royo de las Gallinas, and the other one was called the Canada del Coyote.

Same objection.

Q. Did you make an examination of the country as shown by this plat, especially that portion between Cerrito Palado and the Ojo del San Marcos with respect to the existence of arroyos?

A. Yes, sir.

Q. And did I understand you to say that these two arroyos you have given were inside of these places?

A. Yes, sir.

Q. Did you hear applied to either one of these arroyos the name of Arroyo del Oregano, by inquiry or otherwise?

A. No, sir.

Same objection.

Q. I will get you to look at this map and state who made it?

A. I made it.

Q. Have you ever visited this country that is delinetaed on that map prior to this investigation of this land?

A. Yes, sir.

Q. I will get you to state whether or not the various objects that are delineated on that map are correctly located according to your best information?

A. Some of them are accurately located; for instance, these Cerrillos peaks and the Cerrito Palado and the Ojo del Coyote and these claims are all located accurately as well as these objects that you see here are located from maps in the office here.

Q. What do you mean by accurately?

A. I mean that I found the public corners in the public surveys and the direction of these points.

Q. What about the correctness of the location on that map of the other objects delineated thereon?

A. The road from Santa Fé to San Marcos as indicated on this map I think is correct practically; that is taken from the official surveys of these two townships.

Q. What about rhe Coyete spring?

A. The Coyote spring is located from the corner of sections 26, 27, 34 and 35.

Q. Is that correctly located?

A. If the corners are correctly located the location is correct.

Q. How is that Coyote spring located as to correctness or otherwise with respect to the Cerrito Palado or this turquois hill; is that correctly located?

A. Yes, sir; that is the correct location of it.

71 Q. And the Canada del Coyote, and the Arroyo de la Piedra, what as to the correctness of their location on this map?

A. They are correctly located; that is I did not run a compass over the lines.

Q. But the points are correctly located?

A. Yes, sir.

Q. Have you examined the maps in the U. S. land office here with regard to the premises included within this tract of Jose de Leyba as claimed?

A. Yes, sir.

Q. Did you find that the public surveys extended over this tract or not?

A. Yes, sir.

Q. At what date did you find they were extended?

A. I think that the survey was made in 1861, but they were not filed in the register's office here until the 24th day of March, 1885.

Q. Did you find also the outboundaries of this track as claimed and the entries under the public lands laws?

A. Yes, sir.

Q. I will get you to give these entries and the dates upon which they were made.

A. On January 24, 1887, one Thomas Whalen made a homestead entry which is designated as the northeast quarter of section 34, township 15 north, range 8 east of the principal base and meridian line of New Mexico, and he made final proof upon the same and it has been patented by the U. S. Government; on June 20, 1887, one Diego Mares made a homestead entry which is designated as the southwest quarter of section 26, of the same township, upon which he made subsequently final proof and which has also been patented; on November 28, 1887, on- Otto Zeigler made a homestead entry which is designated as the northwest quarter of section 35, same township, upon which he subsequently made final proof which has also been patented by the Government; on September 15, 1887, one Samuel Brumagen made a declaratory statement upon land which is designated as the west half of the northwest quarter and the east half of the northeast quarter of section 26, of the same township upon which no final proof has been made; on June 29,

72 1887, one Thomas Moore made a pre-emption declaratory statement upon land which is designated as the east half of the northeast quarter of section 26, and the west half of the northwest quarter of section 25, of the same township upon which no final proof has been made; in 1888 one Zeigler made a pre-emption declaratory statement upon land which is designated as the east half

of the northeast quarter of section 3, and the west half of the northwest quarter of section 2, of township 14 north, of range 8 east; on October 18, 1897, one Carroll made a homestead entry upon land which is designated as the southeast quarter of section 26, township 15 north, of range 8 east upon which as yet no final proof has been made. In addition to these entries there has been a survey for a patent made by some parties in section 21, of township 15 north, of range 8 east, and which is located upon the map which I hold in my hands, from a certain corner upon certain range lines between ranges 7 and 8 E., township 15 north, said mining entry is 300 feet by 1500 feet.

Q. This last that you have mentioned did I understand that that was included in the McNulty tract as heretofore made?

A. Yes, sir.

Q. Have you delineated these various entries under the public land laws on this map?

A. Yes, sir.

Q. State whether or not they are correctly located on that map?

A. The land entries are correctly located and the mining claim is correctly located on this map provided the notes of the survey is made correctly and upon which this proceeding for a patent is being pursued. I will say however, it was located from two points and since that time one of these points has been changed and consequently I only had one point to locate from.

Q. Now, you got delineated here the grant of Jose de Leyba made in 1728; from what did you delineate that on this map?

A. From the papers in the case and from a sketch map that they filed in connection with it.

73 Q. What do you mean by the papers in the case?

A. They call for the San Marcos road as an east boundary at one point, and they claim that the road from Pecos to Cerrillos was the south boundary of the De Vargas grant, and they claimed that according to the plat that they filed one boundary was along the road which they claimed runs from Cienega to Galisteo, and the south boundary I took from the scale of their map.

Q. Do I understand what you embrace is what you understand their claim to be?

A. Yes, sir.

Q. Based upon an examination of their papers and petition and their sketch map attached to their petition?

A. Yes, sir.

Q. You do not pretend to say that this in your judgment locates correctly the Jose de Leyba gr-nt, do you?

A. No, sir.

Q. Now, you got laid down here the Cerrillos tract; I will get you to state how you located that?

A. I located that in accordance with the official plats that have been approved by the Court of Private Land Claims.

Q. Now, have you heretofore testified about an old road going from Galisteo to Cienega; tell about that?

A. You see delineated on this map two roads along in the direc-

tion of Galisteo; the most direct road from Cienega to Galisteo is this one above; there is another road which is spoken of as being one of the boundaries of the Cerrillos tract in the papers connected with that grant and which is an old road, part of it seems to be almost obliterated, which you might travel and go to Galisteo, but in my opinion you would go out of the way to go that road; that road is marked "Old road" on this plat; this road goes by the Ojo del Coyote and down in the direction of San Marcos spring.

Q. You referred in your testimony to a road made by Nasario Gonzales and running to the west of the Ojo del Coyote and Cerro Palado or the turquois mine; have you that indicated on this map?

A. Yes, sir.

Q. Which road is it?

74 A. It is this road marked "Road from Cienega and Gotero ranch made by Nasario Gonzales."

Q. Is that correctly located on this map?

A. Yes, sir; to the best of my observation; I have traveled over that road.

Q. You got located there the Arroyo de la Piedra, and the Canada del Coyote; I will get you to state if they are correctly located?

A. Yes, sir; they are located correctly, and certain points on this map I made are approximately correct, and between these points of course I did not run the line along the arroyo, but I think they are correctly indicated on this map.

Q. Are there any other points on this map not specifically referred to that you embraced here, or objects named, or objects given which are correctly delineated on this map?

A. Yes, sir; I speak particularly of the Cerrillos peak and the Cerrito Palado, and the Ojo del Coyote and other points on this map are correctly located; some of them may be a few yards out of the way.

We tender this map in evidence in connection with Mr. Coleman's testimony. (Defendants' Exhibit A–1.)

Q. I will get you to state generally what is the topography of the country from Bonanza eastward, or from the west boundary as laid down here, eastward from Bonanza or Los Cerrillos eastward?

A. *The* general the country is rolling plains; there are some peaks; and about this Cerrito Palado there are a number of hills that extend in an easterly and westerly direction; these are not delineated on the map there.

Q. What as to its being woody or otherwise?

A. There is no timber further than a few scrubby bushes.

Q. Standing at the Cerro Palado and looking eastward, what is the character of that country as to being a plain or otherwise?

A. I should call it a plain; I could not characterize it any other way.

Q. How far eastward does that plain stretch?

A. I could not say accurately for it stretches to the southeastward to the mountains.

Q. How far is that?

A. It may be from 8 to 10 miles; 10 miles probably.

75 Q. What is the character of that plain as to being bare or otherwise?

A. It is bare of trees.

Q. Did you find any water on this tract?

A. No, sir; none except in wells and at Bonanza and Cerrillos.

Q. There is some water at the head of the arroyo which runs west from that point at Bonanza or Cerrillos?

A. Yes, sir.

Q. That is inside of the Cerrillos grant as you have it laid down?

A. Yes, sir.

Cross-examination by Mr. CLANCY:

Q. When you testified that the Ojo del Coyote was outside of the land claimed in this case, you mean to say that it is wrongly located on the sketch map as being in section 34, township 15 north, when as a matter of fact it should be located in section 2, township 14 north?

A. I found it to be actually in section 2, township 15 north, range 8 east.

Q. And that would make it fall a little outside of the boundary line set out in the sketch map?

A. Yes, sir.

Q. Can you testify about the rise of land which divides the arroyo where the Coyote spring is from the place where the San Marcos spring is; how much higher is that, would you estimate it above the arroyo where the Coyote spring is?

A. I suppose it may be 50 feet.

Q. How far is it from the Coyote spring to the top of that riase of ground?

A. I do not think it is over 150 yards; it may be a little more.

Q. That was not a matter to which you had given any special attention?

A. No, sir.

Q. Have you any information as to what has become of this man Brumagen you testified about?

A. No, sir.

Q. Or either of Moore or Carroll?

A. I heard that Moore lives in El Paso; I do not know;

76 Carroll I think is down in that country somewhere at present; possibly he may be at Cerrillos; I do not know anything about it at all.

Q. When you went down to make this examination, did you go over the land carefully in these entries?

A. I went over the land carefully, some of the land, and I inspected all of these entries as special agent of the General Land Office a good many years ago.

Q. Can you state whether there are any evidence of habitation or improvement on these entries to which final proof has been made?

A. There are evidences of improvement and much evidence of improvement on these patented entries.

Q. Were there any about which no final proof is made?

A. No, sir; I do not think there was any that I inspected.

Q. How long ago was that?

A. I think it was in 1896.

Q. Did you learn anything about the existence of lands out in that part of the country which are known as the Pueblo Viejo de la Cienega?

A. I know where the Cienega is and where the viejo known as the Cienega is located; as to the boundaries of that land I do not know anything except what they told me; the information I received upon that point was not very definite.

Q. Was your attention called to a mound of stones which had the appearance of being used as a mark of a boundary at the point where two roads come together at a little distance northeast from the place that is called Cienega or northeast from the place where Nasario Gonzales lives?

A. No one called my attention to any such monument, but I will state that there are several such monuments at intersections of roads around in that vicinity indicated, not one, but several which I have seen often in passing the road there.

Q. How far is this point on the map made by you where the road from Pecos to Cerrillos intersects the road from Cienega to Galisteo from the settlement called Cienega?

77 A. It is about a mile possibly; may be a little more.

Q. And La Cienega is in a westerly direction or a little north of west from that point is it?

A. My recollection is it is nearly west of that point.

Q. You refer to the place where Nasario Gonzales lives?

A. Yes, sir.

Q. I ask that because the place that they call La Cienega is spread out over so much space?

A. Yes, sir; there is a little village there called Cienega; there are a good many houses.

Q. Do you know the place that is called the Pueblo Viejo of the Cienega?

A. No, sir; I do not know.

Q. You never have seen any old pueblo ruins out there in that vicinity?

A. Not in that immediate vicinity.

Q. On this map I see marked "Ruins of old house built by Jesus Narvais;" about how far is that place from the Ojo del Coyote?

A. It is about a mile; may be a little less.

Q. And in what direction?

A. In a northwestern direction, or a little west of north.

Q. From whom did you learn that they were the ruins of the house built by a man named Jesus Narvais?

A. Himself.

Q. Did he tell you when he built that house?

A. He did not tell me the exact year in which he built it, but my recollection is he told me 20 odd years ago.

Q. How deep is that arroyo where the Ojo del Coyote is?

A. I have just stated that it was probably 50 feet from the bottom of the arroyo up to the top of the lands between that and San Marcos; that is about the depth of the arroyo you might call it; there is a depression in crossing the arroyo on the north side at the place where the spring is.

Q. How high is the bank of the arroyo on the north side?

A. It is a gentle slope; there is a road there possibly about the same elevation on the north side as it is on the south; may be 50 feet or may be not quite so much.

78 Q. Is it steeper on the north side than it is on the south side, as you recollect?

A. No, sir; I do not think there is much difference.

Q. On your direct examination in the case you said that you had ascertained from the papers in this case or from the sketch map filed with the petition that the petitioner claimed the western boundary to *a* be a road which is shown on your map; I call your attention to that and ask you if you are certain that the papers in this case call for a road as the western boundary?

A. I did not say the papers; I said the sketch map.

Q. Is it not a fact that the boundary as shown on the sketch map does not follow that road?

A. Yes, sir; that is the fact, nor does my line delineated upon this map follow the road; the line upon the sketch map is north and south and I made my line a no-th and south line.

A. I want to call your attention to that and correct any misunderstanding as to the petition in this case claiming that the road was the boundary, although it may have happened that the north-and-south line follows a portion of the road for some distance.

A. Yes, sir; in making my map I will state that after I failed after making an effort to find the points designated in the papers, my only reco-rse was to take the map which was filed, and as I could not find the lands of Juan Garcia de las Rivas I had to take the map that was filed as the only means of describing the lands on my map.

Q. Can you give us the names of the people with whom you talked with regard to the matters which are shown on the map made by you?

A. Yes, sir; I think so.

Q. Please do so.

A. Jesus Narvias, Nasario Gonzales, Jose Benevides or Duran, Antonio Bustamente, Francisco Bustamente and I talked with some others who are not so old in that vicinity, a son of Narvais, and one or two others that are not so old; I do not remember the

79 names of all of them, and a man named Romero; I failed to mention his name, I forget his first name, but he lives at Cieneguilla, Francisco, I believe.

Q. Were any of these people able to talk with you in English?

A. One of them could talk a little English, Mr. Nasario Gonzales; he can talk a little English.

Q. You talked with him in Spanish?

A. My conversation was with him in Spanish through an interpreter and if I made any mistake he corrected me.

Q. Was he a competent interpreter?

A. He ought to be; he is a resident here, Webster Davis is his name.

Q. I see on this map you have marked a place as "Old dug-out built by Francisco Montoya" which is quite near the Coyote spring?

A. Yes, sir.

Q. From whom did you learn that that was built by Francisco Montoya?

A. From Jesus Narvais and his son.

Q. They did not say that they or either of them had built any house or hut at or near that point did they?

A. No, sir.

Q. Did you see any signs of ruins near that place?

A. No, sir.

Q. Does the road go directly across the arroyo where the spring is, or does it run along in the arroyo by the spring?

A. It goes directly across the arroyo.

Q. And is there no road running along in the arroyo at that place where the spring is?

A. I think not; I saw no evidences of any.

Redirect examination by Mr. POPE:

Q. Do you speak Spanish?

A. Yes, sir; a little.

Q. How long have you lived in this country?

A. 15 years.

WILLIAM M. TIPTON sworn on the part of the Government testified upon direct examination by Mr. Pope as follows:

Q. What is your name?

A. William M. Tipton.

Q. What is your occupation?

A. I am special agent in the office of the U. S. attorney for the Court of Private Land Claims.

80 Q. Where do you live?

A. I live here in Santa Fé.

Q. How long have you lived here?

A. Twenty-four years.

Q. Are you acquainted with a road going from the city of Santa Fé to the pueblo of San Marcos?

A. Yes, sir.

Q. Known as the San Marcos road?

A. Yes, sir.

Q. How long have you known that road?

A. I have known that road since shortly after I came to Santa Fé, that is by hearing it referred to by that name; the first time I passed over it I am not able to state with accuracy, but my impression is that it was prior to the spring of 1879.

Q. Did you ever go to San Marcos over it?

A. Yes, sir.

Q. Describe to the court the course of that road after it leaves the city with respect to San Marcos and Galisteo?

A. The road passes out of the city of Santa Fé along the west front of the territorial capitol building in the direction I should think slightly west of south, being the same road that is commonly known in the city as the Galisteo road, known by the same name outside of the city for that matter, and its general direction for I should think over 7 miles, perhaps 8 miles, is southwest, west of south, and there it divides, the left-hand branch of it going to Galisteo and the right-hand branch to San Marcos spring, and after it leaves the Galisteo branch I think its direction is much more towards the west than it is during the first 7 or 8 miles after it leaves town.

Q. Do you know of any road forming a junction with this road at the west front of the territorial copitol?

A. Yes, sir; there is a road that comes in there.

Q. What is the name of that road, or what was the name of it when you first knew it, and what is the name of it now?

A. When I first knew that road it was more commonly called the Albuquerque road, or it was referred to as the Cerrillos road.

81 It is known by both names even at the present time.

Q. Have you ever heard that road called the *Camino de los Carros?*

A. Yes, sir; I have heard it so referred to by the Mexican people between here and Agua Fria.

Q. Have you had occasion to come across *Camino de los Carros* in old grant papers in the office of the surveyor general of New Mexico?

A. Yes, sir; there are frequent references to the road designated in that way among the old Spanish papers in that office. It is the same road that we call the Cerrillos road at the present day.

Q. Is that the road going by the Government Indian school.

A. Yes, sir; it passes along the south front of the Government Indian school.

Q. Do you know the location of a road called the road to El Alamo, or the Agua Fria road?

A. Yes, sir.

Q. Where does that road leave the city of Santa Fé, and what is its direction?

A. That road is an extension of what in town here is called Water street, and it starts out at the crossing of the track of the Narrow Gauge railroad at the Guadalupe church, and then runs in a direction I think south of west to the town of Agua Fria and further.

Q. Between these two roads do you know of the existence of any arroyos?

A. There are a number of arroyos at different points between these two roads.

Q. Do you know an arroyo running east and west, approximately east and west, and crossing the San Marcos road a short distance beyond the territorial capitol and near the residence of General Easley?

A. Yes, sir.

Q. Where does that arroyo rise if you know?

A. It rises as far as I know in the foothills at the west base of the Talaya mountain; I do not know how far in the mountain it penetrates, but I know that it comes from that mountain. It is the first range to the southeast of town here; it is the first mountain south of the Santa Fé creek and east of the town.

82 Q. How does that arroyo run with respect to the *Camino de los Carros* and the road to El Alamo and the Agua Fria road to which you have referred?

A. That arroyo?

Q. Yes, sir?

A. After passing the San Marcos road the arroyo runs I should think nearly west; perhaps a little north of west until it crosses the Cerrillos road and then turns sharply to the left and follows the right-hand edge of the Cerrilos road going out of town for several hundred yards and then turns a little to the right and passes under the track of the Atchison, Topeka & Santa Fe railroad, thence it continues in the same direction that it had when crossing the track for a distance of more than a quarter of a mile, perhaps a mile when its course changes a little further to the south and continues in a general direction south of west between the Agua Fria road on the north and the Cerrillos road on the south for a distance of a number of miles; I could not state how far as I have never followed it more than perhaps a mile and a half west of the railroad track with a view of ascertaining its direction, but from the point to which I followed it I could see it in the same direction that it had for about a mile previous.

Q. After crossing the *Camino de los Carros* does or does not that arroyo run into the *Camino de los Carros* and the road to El Alamo?

A. It does.

Q. Immediately south of that arroyo what is the topography of the country?

A. That would depend at what point you are referring to.

Q. Take its most eastern point that you visited?

A. At the most eastern point of the arroyo which I ever visited there are some high hills south of it; after passing west of these hills it comes down through a deep cut over a country that has a heavy slope west and north of west until it enters the city of Santa Fé and from there until it crosses the Cerrillos road and west of that point until it gets about north of the penitentiary there is a marked rise from the arroyo towards the south forming a ridge on which
83 the Ramona school is built; after it gets west of the penitentiary there is a slope on the south of it rising from the arroyo, but it is not so marked as it is further east, that is it is not so high,

and on the south side of the arroyo there the land is not very much higher than the arroyo.

Q. Are you acquainted with another arroyo more to the south and along between this slope that you have referred to?

A. Yes, sir.

Q. Is that the first arroyo running to the south of the ridge on which the Ramona school is located?

A. Yes, sir; it is.

Q. Will you describe the course of that arroyo?

A. I do not know exactly where its head is; I never followed it to its head, but my impression is that it rises west of what is commonly called the old stage road to Las Vegas.

Q. Where is that with respect to the territorial capitol?

A. That road is east of the territorial capitol; it is the same road that passes out west of the San Miguel church and the San Miguel college; I think that arroyo rises on the west edge of that road, but I am not perfectly certain about that; it runs west along the south side of the ridge on which the Ramona school stands, and after passing the San Marcos road it turns more to the direction of the north passing north of the territorial penitentiary crossing the track of the Santa Fe railroad and entering the grounds of the deaf-mute school just south of the building, then for a short distance it turns to the left again and runs almost parallel with the arroyo which I have previously described and near to it for a distance of about a mile and a quarter I should think when the two come together.

Q. Then I understand that arroyo also runs in between the *Camino de los Cerros* and the road to El Alamo or the Agua Fria road?

A. It does from the point where it crosses the Cerrillos road and enters the grounds of the deaf-mute school.

Q. The deaf-mute school is where with respect to the penitentiary?

84 A. The deaf-mute school is north of the penitentiary perhaps 300 yards, and the arroyo is only a few rods south of the building of the deaf-mute school.

Q. What is the topography of the country on the south of that arroyo starting at its most eastern point you observed?

A. At its most eastern point its general trend is toward the west; after it crosses the San Marcos road the rise is not so high; it is similar as it rises on both sides of that arroyo; after it crosses the Cerrillos road there is the same rise to the south that I spoke of a while ago, that is going south of the first arroyo that I described, the land is higher towards the south and between it and the arroyo which I previously described the land is very nearly level.

Q. What is the meaning of the Spanish word *cuesta*?

A. It means a slope.

Q. Is there any *cuesta* south of the first arroyo which you referred to, if so, to what extent?

A. Yes, sir; especially within the city there is a slope from the south side of it that passes clear to the ridge on which the Ramona school is situated; further west it may be said that the arroyo which

is further south comes down through this sloping country; there is a slope from the northernmost of the two arroyos towards the southernmost, and then from the southernmost the rise still continues towards the south, but not so high as the ridge on which the Ramona school is situated.

Q. How far west is there a *cuesta* or slope on the south side of the first arroyo, the northernmost of the two?

A. It is a little hard to describe it to one who has not seen it so as to make it clear. There is a slope on the south side of this northernmost arroyo all the way across the town you might say until you reach the Cerrillos road; after you cross the Cerrillos road the land between this northernmost arroyo and the southernmost arroyo which is near it, it is very nearly level, and the slope south of the
85 southernmost arroyo is not so high as it is further east, and the southernmost arroyo I would say came down through this slope which rises from the south edge of the northernmost arroyo, but after getting west of the Cerrillos road the land between these two arroyos is practically level, except at their very edges; of course there *there* is a bank. There is a slope south of both of them as far west as the point where they join and even further.

Q. Do you know where the *Camino de en Medio* constituting the west boundary of the De Vargas grant confirmed by this court is located?

A. Yes, sir; I have been over that whole line; I know where it turns out of the Galisteo road and I followed it for several miles south of that point.

Q. Have you been on that road since that grant was confirmed?

A. I have been over it a number of miles.

Q. Did you go where the west boundary monuments or any of them are along that road?

A. I have seen the northwest corner monument.

Q. Where does that road run with respect to the territorial capitol from the town west?

A. My understanding of it is that in going out of town it is the same road as the Galisteo and San Marcos road, and it is named the *Camino de en Medio* from the point where it leaves the San Marcos road.

Q. And where is that point?

A. I should think that was perhaps ¾ of a mile south of the Ramona Indian school, but I have never had an occasion to observe the distance with a view of expressing an opinion about it; I may be in error about it, but that would be my recollection.

Q. And what is the direction of the road after leaving the San Marcos road?

A. It runs more generally south than the San Marcos road.

Q. And where is its southern terminus?

A. I have never been to the south end; I understand it goes down to Galisteo; I never have traveled it that far.

Q. How far east of San Marcos and the turquois mine does
86 this *Camino de en Medio* run?

A. I have never had occasion to think about it; it is a

long ways; it must be I should think 9 miles at any rate east of the turquois mines.

Q. Have you made a map showing these roads that you have described and these arroyas?

A. I have made a sketch showing the San Marcos road, the Agua Fria road and the Cerrillos road as they are located or situated in the vicinity of Santa Fé.

Q. What arroyos?

A. The two arroyos to which I have referred in my testimony.

Q. And the capitol building?

A. The capitol building is also on the sketch.

Q. What do you say as to the correctness of this sketch map as embodying the relative positions of these roads and these arroyos and the capitol building?

A. As to their relative positions I believe it to be correct; I want however to state that it is not drawn to a scale; it is not the result of an actual survey?

Q. How far is the capitol building due south from the Santa Fé river?

A. I do not know; I presume it is 150 yards, measuring from the north end of the building; 150 yards from the south edge of the river along the San Marcos road, or the Galisteo road as it is also called.

Mr. CLANCY: Counsel for the petitioner admits that this grant was never presented by any one to the surveyor general of New Mexico, or rather that no one ever asked the surveyor general to take any action on the claim for this grant under the act of 1854 or otherwise. I do not admit that it was incumbent on anybody by the provisions of that act to ask for any action, so that I object to the admission of the effect, as that act requires the surveyor general to do something, but never imposes any duty upon the claimants of the grants.

Q. Are you acquainted with the signature of Joaquin Codallos y Rabal?

A. I am.

87 Q. I will get you to look at this paper marked Paper 1, and A in red ink, file 104, and state whether or not you recognize any of the signatures of the governor of New Mexico on that document as genuine signatures?

A. There are two signatures on this document purporting to be the signatures of the governor inquired about, and I believe both of these signatures are genuine.

Q. What would you say generally as to the paper being genuine and what it purports to be?

A. These papers purporting to be a petition, a grant and act of possession in regard to certain lands granted to Juan Alfonzo Rael de Aguilar, the possession being had in the year 1744, I beli-ve the whole document is genuine.

We offer this sketch map made by Mr. Tipton in evidence. (Defendant's Exhibit B.)

We also offer in evidence this paper (Defendant's Ex. "C") marked 1, and A in red ink, file 104, and translation. (Defendant's Exhibit "C–1.")

Q. Will you examine this paper now presented to you marked Defendant's Exhibit D, original grant papers, land-grant claim No. 121, in the Court of Private Land Claims, and state whether or not in your opinion that is a genuine document and what it purports to be, and that it is what it purports to be?

A. The paper is undoubtedly genuine, and it is what it purports to be.

We offer this paper in evidence. (Defendant's Exhibit D.) And translation, (Defendant's Ex. "D–1.")

Cross-examination by Mr. CLANCY:

Q. On this sketch map that you have made I see there is nothing to indicate the direction of the points of the compass; will you add to it the usual mark showing the direction of the north, so that we can see about the direction which the roads run (witness does so.) Approximately for about how far from the capitol building does this sketch show the roads?

A. Well, when I made the sketch I did not have in my mind any particular distance; it was rather the idea of showing the
88 relative directions of the roads. The direction I have given to the Agua Fria road and the Cerrillos road I think were their general directions for a distance of certainly not less than 3 or 3½ miles, and I hardly think the direction of the San Marcos road given here would represent the exact direction of that road quite so far; of course there are bends in these roads that I did not delineate here, simply intending to show their direction within a distance of say three or four miles from Santa Fé.

Q. Do you know any names for these arroyos that you designated?

A. I know the names that are applied to both of them here in town.

Q. To what distance are these names applied?

A. I do not know.

Q. What are these names?

A. The northernmost one is sometimes referred to among the people as the Arroyo de los Tenorios, and the other one as the Arroyo de San Antonio.

Q. I will get you to mark these names on the sketch (witness does so). The general direction of a great many arroyos south of Santa Fé is from the hills on the east towards the west, is it not?

A. Yes, sir.

Q. How far from Santa Fé along the Galisteo road is it to the Arroyo Hondo?

A. I should think about 5 miles.

Q. In going along that road from Santa Fé to the Arroyo Hondo you go over a succession of ridges and across a number of arroyos do you not?

A. Yes, sir.

Q. How many do you think there may be in that distance of 5 miles?

A. There are 4 that I can recall now; that is arroyos of such size as would attract one's attention; of course there are little gullies that I would hardly think of considering at all as arroyos, but there are 4 that I can recall now between here and the Arroyo Hondo; from the south edge of the town there would be about 4.

Q. Do you remember the names of these arroyos?

A. One of them is called the Arroyo del Pino, or the Arroyo
89-99 de los Pinos I am not certain; then there are several I do not know by any name, and the largest one is the Arroyo de los Chamisos.

Q. Is that Arroyo del Pino the first one south of this Arroyo de San Antonio?

A. My impression is that the first one south of the Arroyo de San Antonio is the Arroyo de los Chamisos; I am under the impression that between the Arroyo del Pino and the Arroyo de los Chamisos there are two arroyos crossing the road and the Arroyo de los Chamisos is the last one now in my mind as crossing that road and going in the direction of the Arroyo Hondo.

Q. Then from that arroyo the country goes right up until you get over into the Arroyo Hondo?

A. That is my recollection now.

Q. Was that Arroyo de los Chamisos one of the boundary calls in the De Vargas grant?

A. No, sir; the hills north of it were which were called the Altos de los Chamisos.

Q. And it was called the Alto- de los Chamisos?

A. Yes, sir.

Q. How far west of the Galisteo road does that Arroyo de los Chamisos extend?

A. I could not state; it extends for a great many miles; I do not know how far; I think it finally comes into the Santa Fé river, but what the distance is I do not know; I presume it is not less than ten miles.

Q. Do you know where it comes into the Santa Fé river?

A. No, sir; I cannot state that I do, but I know it must go there; there is no other place for it to go to from the lay of the country.

Q. From your knowledge of the lay of the country and its course, does it run as far west as the town of Cienega before it comes into the river?

A. I should think it would be in that vicinity somewhere.

Q. Is it possible that it runs into the Arroyo Hondo?

A. Yes, sir; it is possible that it might join the Arroyo Hondo and then together they might join the Santa Fé river; I never followed either of them through.

Q. In the De Vargas case did you know how far west it was
100 claimed that the lands extended by the claimants?

Objection because the petition would be the best evidence as to what they claimed. Overruled.

A. I do not know what lands were recited in the petition as forming the west boundary, but I recollect from the sketch map that it was claimed that the lands extended further west even than the John Lamy ranch which I think is what is commonly called the Alamo ranch; there were certain lands mentioned as being on the west of the De Vargas grant, but I do not recall now what their name was.

Q. That ranch that you spoke of, does it lie between Cienega and Cieneguilla?

A. I rather think not; my impression is that it is east of Cieneguilla.

Q. Is it on the Santa Fé river?

A. It is north of the Santa Fé river.

Q. Is it on the banks of the river?

A. It is on some little stream that runs into the Santa Fé river on the north side.

Q. I understand the De Vargas claimants claimed no lands north of the Santa Fé river, did they?

A. No, sir; I think they claimed as their west boundary lands that were south of this ranch to which I have referred.

Q. Still further west?

A. I do not mean that they joined it; the western boundary extended further west than did the ranch owned by Mr. Lamy as I understand it.

Q. Do you know whether or not they claimed further west than the lands of Cienega?

A. My impression is that it was about in that vicinity.

Q. Do you know of a monument in the shape of a pile of stones put up out there which is intended to mark the eastern limits of the lands of La Cienega?

A. No, sir; I do not.

Q. On the Agua Fria road?

A. No, sir; I do not know of any such monument.

Q. The old road from Cerrillos to Pecos was the south boundary of the De Vargas grant was it not?

A. Yes, sir; I do not know that that road was stated to be the boundary in the granting documents; it may be that road
101 was so named in the granting documents, but I do not remember positively about that.

Q. Have you ever heard any of these arroyos between here and the Arroyo Hondo called the Arroyo del Oregano?

A. No, sir.

Q. What does the word "oregano" mean?

A. I think the word in English means marjoram.

Mr. POPE:

Q. Have you ever seen oregano in this country?

A. Yes, sir; I have seen what was called that.

Q. How does it grow with respect to its growing generally or otherwise?

A. Everywhere in New Mexico; I have heard of it in different

parts of New Mexico where I have been; I do not know to what extent it is common all over the Territory, or whether it is at all.

Mr. CLANCY:

Q. Have you ever seen any near Santa Fé?
A. It depends on what you mean by near.
Q. Say within four or five miles?
A. I do not know that I ever did; still my acquaintance with the plant is slight, but it might be growing in that distance and I may not have noticed it.
Q. Do the people of this country make use of it in cookery?
A. Yes, sir; they use it for seasoning meats, sausages and various things.

ALEJANDRY MONTOYA sworn on the part of the Government testified upon direct examination by Mr. Bartlett as follows:

Q. State your name, age, residence and occupation?
A. Alejandro Montoya; about 77 years old; Los Cerrillos, laborer.
Q. How long have you lived in Cerrillos?
A. About 15 or 16 years.
Q. Where were you born and where did you live down to 15 years ago?
A. I was born in Cienega on this same river of Santa Fé in Cienega; at that time I went to Cerrillos.
Q. Are you acquainted with a hill near Cienega known as the Cerrito Pelado?
A. Yes, sir.

Q. What direction is that from the present turquois mines
102 owned by Mr. McNulty and others?

A. The Cerrito Pelado is to the north of the mines.
Q. How far?
A. It is on the same hill.
Q. The turquois mines are in this Cerrito Pelado are they?
A. I do not know what they call them, but I know there are some mines on that hill; I do not know what they call the mines.
Q. Do you know or have you heard of an arroyo in that vicinity called the Arroyo de Oregano, or the Cuesta of the Arroyo de Oregano?
A. No, sir.
Q. Do you know of any land in that vicinity claimed to belong to a grant of Jose de Leyba; did you ever hear of it?
A. No, sir.
Q. Up to the time that they begun mining on this Cerrito Pelado by whom was that land in that vicinity occupied and controlled and used?
A. I do not know.
Q. What is the character of the land in the vicinity of this Cerrito Pelado as to being timbered, watered or pasture land?
A. It is at the place that they call Cerrillos; some people call it

Cerrillos and some Bonanza; Bonanza is a new name for it, and then when the railroad came there they built a new Cerrillos.

Q. Well now answer my question as to the character of the land east and south of old Cerrillos in the vicinity of the Cerrito Pelado?

A. I say that that land that is around there at that little hill I have known as farming land.

Q. The land around the Cerrito Pelado is known as farming land?

A. No, sir.

Q. I am talking of the land around the Cerrito Pelado in that vicinity?

A. It is a plain; it has never been farming land.

Q. Is there any water on it of any character for farming or for domestic purposes?

A. I do not know and I have not seen it.

Q. Where do the people of Cienega pasture their animals, sheep and cattle, with reference to this Cerrito Pelado when you lived there?

A. They pastured them towards the Cerrito Pelado and
103 towards the place called La Misina.

Q. Did you ever pasture any animals yourself down in that vicinity?

A. Yes, sir.

Q. Did any one ever object to your doing so?

A. No, sir.

Q. Did you ever ask permission to do so?

A. No, sir.

Q. Were these lands recognized by the people of Cienega as being the property of any person or as open, public common lands for the use of all the people?

A. I do not know; they used to pasture on them.

Q. When did you first hear of a claim for a grant of the Cerrito Pelado and the surrounding country?

A. I think *of* September of last year.

Q. Who told you about it?

A. A gentleman living at the mines; I do not know his name.

Q. McNulty?

A. Yes, sir.

Q. Did you ever know or hear of the lands of Juan Garcia de las Rivas at Cienega?

A. No, sir.

Cross-examination by Mr. CALVEY:

Q. Did you ever hear of the Pueblo Viejo de la Cienega?

A. No, sir.

Q. Do you know of an old pueblo near Cienega?

A. Maybe there was; I have not known it.

Q. Did you never hear of such a thing?

A. No.

Q. Do you know where the Pueblito de los Lebas was?

A. No.

Q. Never heard of such a place as that?
A. No.
Q. About a mile southeast of the Cerrito Pelado, a mile or two, is there not a good deal of land that is planted and is what is called temporal land?
A. I do not know if that land has been temporal or not.
Q. Have you ever seen any of it cultivated there?
A. Not near the hill; about 2 or 3 miles from the hill I have seen no other land planted except at what they call the old Cerrillos.
Q. You never saw any lands planted just north of the Ojo del Coyote?
A. No.
104 Q. Did you ever see any lands cultivated at Ojo de San Marcos?
A. No.
Q. Have you ever been at Ojo de San Marcos?
A. Yes.
Q. Did you never see any signs of cultivation of land in that place?
A. No.
Q. Were you ever acquainted with Diego Mares?
A. Yes.
Q. Do you know whether he had a ranch down in that vicinity or not?
A. I saw a fence belonging to that man.
Q. Did he not plant his land there?
A. I never saw any planted lands when on his fences.
Q. Did you ever see this tract of that fenced land that had been plowed up and had been planted?
A. It may be it was by animals, but I did not see any crops on it.
Q. Are you acquainted with Thomas Whalen?
A. Yes.
Q. Do you know where he lives down there?
A. Yes.
Q. Didn't he cultivate land there?
A. Maybe he did:
Q. Do you know whether he did or not?
A. I do not know; I know that he lived about that place.
Q. Did you ever know a man named Otto Zeigler?
A. No.
Q. Did you ever know a man named Brumagen that lived just east of where Thomas Whalen lived?
A. No.
Q. Did you ever see a house within a half or ¾ of a mile east of where Thomas Whalen lived?
A. I did not see a house; it seemed to be the ruins of a house but there was no house.
Q. Was it a house made of wood, stone or adobe?
A. I guess it was — adobe house; so it looked from the ruins.
Q. When did you see that?
A. Some years ago; about 8 or 9 years.

Q. Do you know a spring called the Ojo del Coyote?
A. Yes.
Q. Are there any ruins of houses north of that spring?
A. Yes.
Q. How far is it from the spring?
A. It may be a mile or a mile and a half more or less.
Q. I am asking you about these ruins, about the ruins
105 that are quite close to the spring on the north side of the arroyo; do you remember these?
A. I remember having seen near the spring a little house.
Q. What was it made of?
A. I do not know if it was what they generally call shanty or stone house.
Q. Do you know these other ruins that you say are a mile or a mile and a half from the spring; did you ever hear who owned the house or houses of which they were ruins?
A. No; I saw them but never learned whose house it had been.
Q. When did you first see them?
A. About 9 or 10 years ago it seems to me.
Q. When did you first see the Coyote spring?
A. I knew it when I was quite young; I may have been 18 years old when I knew it.
Q. Were there any ruins there at that time?
A. No.
Q. Did you ever hear of the grant called the grant of Los Cerrillos?
A. No.
Q. Did you ever hear of the grant of Juana Lopez?
A. I heard — a grant by the name of Juana Lopez.
Q. Was that the Sitio de Juana Lopez?
A. So it was called.
Q. Did you ever hear of any other grant called Juana Lopez?
A. No.
Q. Did you ever hear of any place called Juana Lopez?
A. No.
Q. Did you ever hear of the Canada de Juana Lopez?
A. Yes, I know it.
Q. Where is the Canada de Juana Lopez?
A. It is to the south of that Arroyo de Juana Lopez; south of west.
Q. Where is the Arroyo de Juana Lopez?
A. It is below Cerrillos to the west.
Q. Have you not heard of the Cienega grant?
A. No.
Q. Did your father live at Cienega before you?
A. No. We lived at Cieneguilla.
Q. Did you ever hear of the Cieneguilla grant?
A. No.
Q. Did you say your father lived at Cieneguilla?
A. Yes.
Q. Was he born there?

A. I think that he was born there.

106 Q. Do you know what a grant is?

A. No, I do not know.

Q. How far is it from the Ojo del Coyote to the Ojo de San Marcos?

A. It may be a mile I think more or less.

Q. How high is that hill from between the two springs?

A. I do not know; there are several there that is not a loma.

Q. How high is the loma?

A. It may be 25 or 30 feet high more or less.

Q. Do you know what oregeno is?

A. Yes.

Q. Did you ever see any growing anywhere?

A. I have seen some of it at some places.

Q. Did you ever see any of it growing around the Arroyo de San Marcos?

Objection as being a new matter. Overruled.

A. I have not seen any at the spring of San Marcos, but I have seen some at the cañada called El Chaquaco.

Q. In which direction is that place from the Ojo del San Marcos?

A. It is the same cañada where the soring is.

Q. Towards the sunrise?

A. Yes.

Q. Have you ever seen any growing in the cañada where the Ojo del Coyote is?

A. I have seen it at other places; I have not seen it at the Coyote spring.

Same objection.

Q. Have you seen it anywhere between the Ojo del Coyote and the Ojo de San Marcos?

A. No.

Q. How far is the place which you call Chaquaco from the Ojo de San Marcos?

A. I say that it is the same cañada; it must be about four or five miles.

Mr. POPE:

Q. Have you ever seen any oregeno growing up towards the mountains?

A. Yes.

Q. Towards the mountains towards the east here?

A. Yes; when it rains it grows, when it does not, there is none there; it grows pretty near anywhere when it rains; I have seen the oregeno when it rains.

107 GABRIEL SENA sworn on the part of the Government testified upon direct examination by Mr. Bartlett as follows:

Q. State your name, age, residence and occupation.

A. Gabriel Sena; 57 years old; La Cienega; work at Cerrillos.

Q. Where were you born?
A. At La Cienega.
Q. How long have you lived there?
A. Since I was born.
Q. Are you acquainted with the country in the vicinity of Cienega to the east and south of it?
A. Yes.
Q. Do you know the Cerrito Pelado in that vicinity?
A. Yes.
Q. Do you know the turquois -ines near there?
A. Yes.
Q. Where are they with reference to this Cerrito Pelado?
A. Towards Cerrillos.
Q. How far are these mines from the Cerrito Pelado?
A. It must be a mile and a half from the turquois mines to the Carbondale hills.
Q. Where are the turquois mines with reference to this Cerrito Pelado?
A. About a mile I have said.
Q. Do you know where Mr. McNulty, the witness here, has his mines?
A. Yes.
Q. Are they on the Cerrito Pelado, on the foot?
A. No.
Q. What is the name of the hill that they are located on?
A. Santa Rosa hill.
Q. And you say the Cerrito Pelado is a mile from there towards Cerrillos; I am asking now what is the distance of the mines of McNulty to the Cerrillos?
A. To Cerrillos it must be 3 miles.
Q. Did you say how far the cerrito known as the Cerrito Pelado is from the mines of McNulty and in what direction?
A. I say it is 3 miles.
Q. What is?
A. From the Cerrito Pelado to the mines.
Q. Are there more than one Cerrito Pelado in that locality?
A. No.
Q. When did you first hear of the claim of Jose de Leyba?
A. No, never.
Q. Did you ever hear of the Arroyo Oregano in that vicinity?
A. No.
Q. Or of the cuesta of the Arroyo de Oregano?
A. No.
108 Q. Did you ever know of any such arroyo or cuesta in that neighborhood by that name?
A. No, never.
Q. Do you know of the lands of Juan Garcia de las Rivas in Cienega or did you ever hear of them?
A. No.
Q. Do you know the old road from Cienega to Galisteo?
A. Yes.

Q. Which side of the Cerrito Pelado does that pass?
A. To the north.
Q. How about east and west?
A. Yes.
Q. Does it go to the east or to the west of this Cerrito Pelado?
A. Towards the sunrise.
Q. How were these lands used in the vicinity of the Cerrito Pelado before they began to work the mines?
A. I did not see any; it was a plain.
Q. Was it cultivated by anybody?
A. No.
Q. Did anybody pasture animals on it, sheep or cattle?
A. Yes.
Q. Who claimed to own that land if you know in the old days?
A. Everybody from La Cienega.
Q. Did you pasture there?
A. Yes, as far out as San Marcos over all the plain.
Q. Did you ask permission of anybody to pasture on this land?
A. No, they were free.
Q. What do you mean by free?
A. They never stopped anybody.
Q. How long was that the custom within your recollection?
A. Up to recently when the railroad came in, but now everything has its name there.
Q. Could anything be raised by cultivating on that land in the vicinity of the Cerrito Pelado?
A. Yes, the last years they raised something.
Q. By temporal or by irrigation?
A. Temporal, only temporal.
Q. Was there any living water or standing water on the lands in the vicinity of these mines and the Cerrito Pelado?
A. No.

Cross-examination by Mr. CLANCY:

Q. Who has been planting temporal land out there?
109 A. Some parties from La Cienega.
Q. Did you ever know a man named Diego Mares?
A. Yes, he was my nephew.
Q. He cultivated some lands out there did he not?
A. Yes, and he has his house there, he has a well.
Q. Did you know a man named Thomas Whalen?
A. I know them all, but I do not know their names; at the present there are many of them there.
Q. The land that your nephew, Diego Mares, — was temporal land, was it not?
A. They were temporal and Diego had a well also.
Q. Did the well furnish water enough for irrigation?
A. Yes, for the crops, for the garden.
Q. But he planted other land that was temporal too?
A. Yes.

Q. And there were other men who settled near him and also planted temporal lands there, was there not?

A. Some Americans from the Madrid mines that used to go to plant there.

Q. What kind of crops did they raise there?

A. Cabbage, beans, melons, watermelons and they also dug wells.

Q. Did you ever hear of the pueblo Viejo de la Cienega?

A. No.

Q. Did you ever see any stone ruins of an old pueblo?

A. Yes, that is where the Arroyo de la Cienega comes out in the Las Bocas.

Q. Is there anywhere near Cienega any ruins of an old pueblo?

A. No, I do not know it.

MAY 3RD, 1900.

Mr. PORTER: We desire to offer in evidence archive No. 24 (Defendants' Exhibit E) and translation (Defendants' Ex. "E-1").

Also archive No. 527. (Defendants' Exhibit "F.")

Also archive No. 1043. (Defendants' Exhibit "G.")

110 Also archive 961. (Defendants' Exhibit "H.")

Also archive 962 (" " "I.")

Also archive 313 (Defendants' Exhibit "J").

Also archive 640 (Defendants' Exhibit "K").

Also decree of this court in the Sebastian de Vargas grant. (Defendants' Exhibit "L.")

Also the plat of the survey of that grant made pursuant to that decree (Defendants' Exhibit M).

Also the title papers in the San Marcos grant, private land claim No. 22 on the docket of this court (Defendants' Exhibit N).

Also the petition filed by claimants in case No. 78 for the confirmation of the Los Cerrillos grant (Defendants' Exhibit "O").

Also the title papers in that case introduced on the trial thereof as Plaintiff's Exhibit A (Defendants' Exhibit "P").

Also the approved plat of the survey of that grant (Defendants' Exhibit "Q").

Also the field-notes of that survey (Defendants' Exhibit "R").

Also the decree of this court confirming that grant (Defendants' Exhibit "S").

Also the affidavit of Mariano F. Sena, sworn to before Atanasio Romero, probate clerk, on December 30, 1897, being the same affidavit shown the witness Sena and identified by him and heretofore identified by the stenographer (Defendants' Exhibit T).

Also desire to file the Government's translation of the title papers in the case, being extracts from the Book Cabilda, heretofore introduced by claimants. (Defendants' Exhibit "U.")

Mr. CLANCY: I object to the admission in evidence of each of the archives and Spanish papers offered by the counsel for the Government, on the ground that each one is irrelevant and immaterial to anything in issue in this case and do not show any connection with the matters here in controversy.

111 ANTONIO JOSE CAMPOS sworn in rebuttal on the part of the plaintiff testified upon direct examination by Mr. Clancy as follows:

Q. What is your name, age and residence and where were you born?

A. I was born here in Santa Fé; I live in the county of San Miguel in precinct number 11; I was born in 1839.

Q. How long have you lived in San Miguel county?

A. I went to live in that county in 1865 or '6, I am not certain of the year.

Q. Where had you lived prior to that?

A. In the county of Santa Fé.

Q. Are you well acquainted with the country between the city of Santa Fé and the town of Galisteo?

A. Yes, I know it.

Q. How early in your life did you become acquainted with this section of country?

A. As far back as I can remember; I may have been about 15 years when I began to travel between here and the town of Galisteo in the employ of other parties.

Q. In whose employ were you and what was the nature of your business in which you were employed?

A. I was in the employ of the late Gaspar Ortiz y Silva; I was manager of his business both personal and real property.

Q. Up to what time did you continue in his employ?

A. I was in his service until I moved away to San Miguel, that was in 1865 or '6.

Q. Do you know a place which is called the pueblo of San Marcos?

A. I know it very well; I know the lands as well as I know my hands.

Q. At what time did you first become acquainted with that place?

A. I knew that place about the year 1848 or '9; I had known the place before, but I had not known the name of it until then.

Q. Are you familiar with the country lying directly north from the pueblo of San Marcos?

A. Yes.

Q. State whether or not there is any spring which you recollect within two or three miles north of the spring of San Marcos?

A. There is the Coyote spring as it is called.

Q. Where is that spring situated?

A. It is away from the pueblo of San Marcos towards the

112 north.

Q. What I want to know is if it is in the open plain or on a hill or a valley or in what kind of a place is it situated?

A. It was a place where a trail went to what they called Cerrillos Viejo or old Cerrillos going from Manuel Delgado's, the spring is here, and San Marcos spring is further below.

Q. Is it situated in the open plain or on a hill or in a valley?

A. It is towards the hills that are near Los Cerrillos.

Q. What is the nature of the ground the spring breaks out of?

A. It is on the ground; it is a water hole; the water used to run a little.

Q. Are there any arroyos near that spring?

A. Yes, there is an arroyo that is called the Arroyo de Oregano.

Motion to strike out this answer of this witness and this line of testimony as being improper at this stage of the case. Overruled.

Q. How near is that Arroyo del Oregano to the Coyote spring?

A. It is very near.

Q. From the place where that spring is what is the character of the ground immediately to the south towards the San Marcos spring?

A. It is level, there are piñons (*sabinos*), cedar trees, a few of them small, but it is not very heavily timbered; there is some small quantities of timber.

Q. State whether or not you have ever known or seen any evidences of habitation at or near the Coyote spring?

Same objection heretofore urged. Taken subject to the objection.

A. I have seen ruins of a house there.

Q. How near to that spring are these ruins?

A. They are near the spring.

Q. On which side, in which direction from the spring?

A. I am not very sure of it, but I think it is to the east.

Q. When did you first see these ruins?

A. Years ago when I was there as manager of this gentleman's business.

113 Q. About how old were you, at the time you first saw these ruins?

A. I saw them, I guess, in '53 or '4, when I was there in charge of the business of Mr. Gaspar.

Q. Describe these ruins; what was their condition at that time?

A. They were ruins, at that time, they were still a little high; they were ruins of stone and mud.

Q. How high were they at that time, as you remember?

A. At that time, I guess, they were about a yard and a half high, and I am informed these ruins are still in existence.

Q. How much space on the ground did they cover?

A. They were about three or four rooms to a house.

Q. Do you know whose house that had been?

Objection for the same reasons. Taken subject to objection.

A. I presume—I do not know whose rooms they had been, until afterwards. I knew that they were the houses of the heirs of a certain Jose de Leyba.

Q. How did you learn that fact?

A. I knew this from an old man, Manuel Bustamente, from Los Tanques; he used to live there.

Q. Did you ever hear it from any other persons?

A. I knew it also from the late Mr. Manuel Delgado, and I knew it from many other persons. It was common knowledge there; if it is necessary for me to give their names, I will do so.

Q. Please give the names of such other persons as you can remember now?

Objection to this as immaterial, irrelevant and incompetent.

A. I remember now Don Manuel Baca y Delgado; I knew that that was the Arroyo de Oregano, and the Cuesta de Oregano; I knew it from his brother Don Jose Baca y Delgado. I knew it from the Narvaises from La Cienega, Ygnacio Narvais and Miguel Narvais. I knew it from my father-in-law, Rafael Romero y Ortiz; it was common knowledge, and I also knew it from Juan Romero y Tenorio; these were among the oldest people.

Motion to strike out the answer, on the ground that it is not responsive to the question. He was not asked about the Arroyo
114 de Organo and the Cuesta de Oregano, and his answer is purely voluntary. Overruled.

Q. Were these people whom you have mentioned older than you?

A. Yes, they were old and grown people; my father-in-law died at the age of 84 at Las Vegas a short time ago. Ygnacio Narvais was 90, he was nearly a century old; Miguel Narvais was about that age also; they were brothers. Juan Romero y Tenorio was also very old. Don Jose Baca y Delgado and Don Manuel Baca his brother also were very old people, who were living at Los Golondrinos, at the settlement of Jose Baca y Terres. I was married at that place in 1850, and since that time, I have got relations with them that communicated these matters with me.

Q. How old a man was Manuel Bustamente, if you remember?

A. He was very old already. He could not walk very much on foot. He used to travel on a burro. He was the oldest of the crowd.

Q. Did you ever learn from any of these old men why that house had been abandoned, near that Coyote spring?

A. They were driven away by the Indians, as I was informed, and they killed a man there at the Cuesta de Oregano; they killed a man by the name of Juan Angel.

Q. What was the last name of the family of Juan Angel, if you remember?

A. He was the son of Salvador Leyba; he was a Leyba, so I was told.

Q. What, if anything, do you know of the existence of lands in that vicinity, which used to belong to the Leybas?

The same objection heretofore noted.

COURT: All this class of testimony is taken subject to the objection.

A. This gentleman, Mr. Bustamente, and the late Don Manuel Delgado, told me that it was a grant, given by the Government to

Jose de Leyba, and according to what they told me, it was bounded from the Ojo del Coyote to the Cienega. I myself did not know the boundaries; I did not know anything about the boundaries.

Q. In which direction from the Coyote spring, is that Cuesta del Oregano?

A. It is a little towards the west; that is how I knew it;
115 that is what they told me it was. I was a resident here; I gave them the names of these men, not because I know the names of them myself. I was only looking after my own business, my own animals.

Q. Do you know a man by the name of Jesus Narvais?

A. I know him very well; he is a brother of Ygnacio Narvais and Miguel Narvais. He is the youngest of this Narvais family; he was married to an aunt of my wife.

Cross-examination by Mr. POPE:

Q. Do you live at Las Vegas?

A. In precinct No. 11, San Miguel county, this side of Las Vegas, at San Alonso, some 18 or 20 miles away from Las Vegas.

Q. Do you know Manuel Baca y Campos?

A. I know him.

Q. How are you related to him?

A. I am his uncle.

Q. Do you know Mariano F. Sena, the plaintiff in this case?

A. I know him now, I did not before.

Q. You never saw him before today?

A. I may have seen him before, but I do not know that I knew him until now. I knew his father, Major Sena.

Q. You never talked with Mariano Sena, before you went on the stand?

A. Never. I have not talked with him.

Q. Did you talk to anybody about this case, before you went on the stand about this matter?

A. I have not talked to any one.

Q. When did you come from San Miguel county here?

A. I came Saturday.

Q. You say you knew Major Sena, Mariano F. Sena's father?

A. Yes, sir.

Q. Where are you stopping here in town?

A. I am stopping here with a sister, and with my nephews.

Q. Are you visiting all of them or stopping at some particular place?

A. I am stopping at Luis Baca's, but I go to the house of Mr. Ortiz, and some of my nephews; I have many relatives here.

Q. You are related to the Senas, are you not?

A. I am a Campos, of the family of Camposes, and am related to the Ortizes and Trujillos.

116 Q. You are related to Mariano Sena, and Jose D. Sena, are you not?

A. No, sir, there is a great difference between the Camposes and the Senas.

Q. How long have you lived in San Miguel county?

A. Since '65 or '6, when I went up there the first time.

Q. From the time when you went to San Miguel county, did you live here in this county of Santa Fé?

A. I lived here until I moved to San Miguel, in this city of Santa Fé, a little ways on San Francisco street on the park, on the street coming from the church.

Q. What business was Gaspar Ortiz y Silva in?

A. He had his business, and I was his manager to look after his cattle and his wagons, and also traveled to the States for him.

Q. Your business that took you south from Santa Fé, was at what place?

A. To the cattle ranch, south of Santa Fé.

Q. Where was that cattle ranch?

A. I- was in the locality of Los Cerrillos, and I would take the cattle to the Pecos, and to the locality around there, according to my judgment, and to Los Dolores; I was the general manager; we would summer at the Los Dolores, in the house of Don Juan Ortiz; the wife of this Juan Ortiz was a sister of this Gaspar Ortiz.

Q. You say you pastured your cattle around Dolores?

A. I used to pasture on these directions, to the Durasno, to the side of the Choro, to the hills of Relon, and this was to the Cerro de Matadoro, and towards the Cerro el Durasco, and I pastured towards the place, what they used to call the Cuchillo, and to Pagosa, and we pastured on this side, up to the hill, wherever the cattle traveled.

Q. You pastured all over the country, in other words?

A. Yes, sir, there was nobody to make any objection as far as the pasture or the water was concerned.

Q. How long were you in the employ of this Gaspar Ortiz y Silva?

A. Ever since I was born and since I came to the age of reason. I was obliged to give him my services; I was with him until I moved away; he was my father; he brought me up; that is,
117 I was brought up by him, and he was my uncle, because his wife was my first cousin; she was the daughter of my uncle Francisco Campos.

Q. How old were you when you first knew the Coyote spring?

A. I knew the Coyote spring after I became acquainted with these places, but I do not remember what year it was, but it occurred in my occupation there, and they told me it was the Coyote spring.

Q. How old were you then?

A. I was perhaps, maybe, between 15 and 20, when I knew it. I do not know how old I was.

Q. That was the first time you were there?

A. Yes.

Q. How long since you have been there?

A. I was there last in '61. I was there the last time when I went in connection to start on a trip for the States.

Q. Before '61, what was the first time that you were there?

A. I had been before.

Q. Do you remember what year it was you were first there?

A. I do not remember when, it was so long ago, and my memory is failing.

Q. Do you remember when the Americans took possession of this territory?

A. The Americans took New Mexico in '46; in '48 the treaty of Guadalupe Hidalgo was made.

Q. What was the first time you were there, after or before the Americans took possession of the country?

A. It was before the coming of the Americans that I knew that place.

Q. How many years before?

A. I do not know how many years, but I was there before; I cannot state how much before, because I cannot remember.

Q. Was it as much as one year before?

A. I do not know if it was one, two, three or four; I do not remember anything then that I was asked about it now.

Q. Was it as much as six years before the Americans came, that you were up there?

A. I say to you that I do not know if it was six or eight or ten years; I did not pay very much attention.

Q. Do you think it was as much as six?

A. It may be.

118 Q. Were you at that time in charge of the property and plots of Gaspar Ortiz y Silva?

A. Yes, sir, it was under these circumstances that I came.

Q. I believe you said you were general manager of Gaspar Ortiz y Silva?

A. Yes, I was in control of his interests, wagons, cattle and peons, and very many times, his money.

Q. Did he have many cattle and many peons?

A. He had about 600 cattle, and they were continually not less than 10 peons in his house every day.

Q. The time you first became acquainted with this spring, you were manager for this man, Gaspar Ortiz y Silva?

A. As far back as I was able to remember anything, I was the party in control of everything.

Q. At the time you first became acquainted with this spring, were you the general manager of Gaspar Ortiz y Silva?

A. I was the one who was in charge of everything, when I knew that spring.

Q. And that was some years before the Americans came into this Territory?

A. I think it was before; the Americans came here in '46; the first came in '41 at Anton Chico; I was perhaps from 15 to 16 years old when the balance of the Americans came at that time.

Q. Had you been to this spring at the time they came to Anton Chico in '41?

A. No.

Q. How long do you think it was before that?

A. It may be I had been there, because I used to travel a great deal.

Q. I mean, when you first knew this spring, was that before or after '41?

A. I do not know but what it was, but I knew it afterwards, when it was called Ojo del Coyote.

Q. You say you were there before '46?

A. Yes.

Q. What were you doing there?

A. I again repeat, that I was there in charge of the business of this gentleman; I was not employed by anybody else.

Q. Did you have his cows there?

A. I was in charge of them, and I placed them wherever it saw fit.

119 Q. Did you have them there at that time?

A. I do not know if they came to that place, but I know that spring; I can now remember this that you asked about.

Q. You say you were there with his business and with his cattle; did you have his cattle there at that time?

A. They were his cattle and mine.

Q. Did you have his cattle?

A. They were his.

Q. Were they there; the cattle were scattered about, grazing in the neighborhood of that spring, were they?

A. They were in the neighborhood of the Coyote spring, and in the neighborhood of the San Marcos spring, and toward the hill, wherever they traveled grazing; there were many cattle.

Q. Do you know where the Cerito Palado is out there in that country?

A. It is called Cerro Palon on the other side of the arroyo, and there is a little palado here on this side that is called the Cerro Palon.

Q. I am asking you about the Cerrito Palado, that is, within four or five miles of the Coyote spring, north?

A. I know that what they called Los Cerrillos; I do not know any hills by this name.

Q. You never heard of any cerro called Cerrito Palado out there?

A. No. They used to call them Los Cerrillos.

Q. Do you know where Mr. McNulty's turquoise mines are located?

A. Yes.

Q. What is the name of that hill?

A. I do not know the name of the cerro; I know where the mines are, and if I were told to go at midnight, I could go straight there.

Q. You say that Gaspar Ortiz y Silva was pasturing his cattle around the Ojo del Coyote, in various directions; were you ever up at Cienega in that direction?

A. No.

Q. You never grazed beyond the cerros, did you, where the plains are to the north, and to the east of the Ojo del Coyote?

A. There are plains in every direction, towards the east, and

towards Juana Lopez and towards La Cienega, and from Cerrillos this way, there are the hills with timber on them.

120 Q. I am asking you about the plains to the north and east of the Ojo del Coyote; do you know that plain?

A. There is a part of it to the north, and another part of it to the east, as far as the Cañada Gallina, because the road goes to Galisteo; because that is a little ways off.

Q. That plain to the north and east of Ojo del Coyote; how was that used at the time you were down there pasturing?

A. The people of La Cienega used to use it by letting their animals loose on it and we were in control of my stock, in the Arroyo del Vasquez.

Q. Did you come on these plains to the north of the Ojo del Coyote?

A. No, I said that we used to control our stock towards the south

Q. And the people of La Cienega used to pasture over there, did they?

A. Yes, it was pastured all over, by all of these people.

Q. It was general, it was in general, that all these people pastured their stock there; nobody ever objected to their pasturing, did they?

A. Nobody opposed it.

Q. It was all common for pasture?

A. It was free.

Q. And that was when you were first there?

A. Yes, sir, the first time, I saw it always since I lived there.

Q. When was the next time you were there after the first time prior to '46?

A. I was not very much stuck on the spring there; I was looking after my own business, and guess I was there several times. I was not much in love with it.

Q. It was a very poor spring, was it?

A. Sometimes, when it is dry, why, there is very little water. Sometimes the river is dry and much more so the spring.

Q. You say you were there several times between the time when you first went there, and the time you went over to San Miguel county to live; about how many times were you there?

A. I said I was here until '60, and '61; that was the last time I saw it. Maybe I was there several times; since that time I have not been at that place, but I know them.

121 Q. Do you know an arroyo down there called the Arroyo de la Piedra?

A. Yes, sir, I have been there; it was the place where the late Don Francisco Baca y Torres had his ranch.

Q. Where does that run with respect to the Ojo del Coyote?

A. It is on the other side of the San Marcos spring; it is towards the Cerro de la Matadoro, and the houses of the herders are still there, and also the stone corral.

Q. Is it to the east or to the west of this Arroyo del Coyote?

A. It is to the east of the Arroyo de la Piedra, but is beyond the San Marcos spring.

Q. The Arroyo de la Piedra is to the east of the Ojo del Coyote, do I understand you?

A. It is more to the east than to the west, that is, as I know it, if it is the same Arroyo de la Piedra that I know.

Q. How far is it to the east of the Ojo del Coyote?

A. I do not know, I cannot state how many miles it was; we did not pay as close attention then as we do now.

Q. And your best judgment is that it is as much as a mile?

A. I do not know if it is one mile or a day's travel; I cannot state how far it is from there to here.

2 P. M.

Q. In your testimony before dinner, you spoke of a point or a place up to which you pastured, and above which the people of Cienega pastured; where was that point?

A. It was all over these plains from the Ojo del Coyote, and from Los Cerrillos; the people of La Cienega used to run their animals up to the arroyo.

Q. What arroyo?

A. The Arroyo de Vasquez. It is the arroyo coming from Galisteo into the Arroyo de la Garison.

Q. Did I understand you pastured nŏrth or south of the Arroyo de la Vasquez?

A. They pastured in various directions; there was nobody to stop them.

Q. Did you say the Arroyo de Vasquez was the line where the people of La Cienega pastured?

A. Their stock traveled as far as they pleased; they were
122 to be found in the pueblos of the old Rael as well as this way.

Q. What is this Arroyo de Vasquez called, the arroyo that comes into the Rio Grande at San Marcos?

A. That is the arroyo that we called the Arroyo de Vasquez.

Q. Is that the same as the Galisteo arroyo?

A. Yes, it is the same stream.

Q. Do these arroyos run into this Arroyo de Vasquez?

A. That Arroyo de Vasquez runs near it, more or less.

Q. And south of San Marcos?

A. Yes.

Q. Did you ever hear of an arroyo called the Arroyo del Coyote?

A. At the time I was there, I never heard anybody mention the Arroyo del Coyote.

Q. Did you ever hear any cañada called the Cañada del Coyote?

A. No.

Q. Near the Coyote spring, did you ever hear of an arroyo there?

A. No, sir, I never heard such a thing mentioned.

Q. What arroyo is the Ojo del Coyote?

A. I do not know in what arroyo it is.

Q. Is it near any arroyo?

A. There are several arroyos there, but I only put the stock there, because I saw that it was not sufficient for all the stock.

Q. Don't you know, as a matter of fact, that the Ojo del Coyote is situated right in the middle of an arroyo?

A. I did not pay very much attention.

Q. And you do not know whether it is in an arroyo or not?

A. I did not take enough interest in anything; that is what they called it, and that is what I call it.

Q. You spoke of an Oregano arroyo?

A. Yes.

Q. How far is this Arroyo del Oregano from that part of the spring?

A. As it was shown to me, it may be a mile and a half or two miles, I am not certain of the distance. I did not pay much attention. I did not pay close attention.

Q. Does that arroyo run east, west, north or south?

A. It runs towards the Arroyo de Vasquez, when it rains.

123 Q. The flow is towards the southwest?

A. Yes, in a southwestern direction, it seems to me; I did not pay much attention.

Q. How far, and in what direction is it from the Coyote springs?

A. I do not know; I did not pay much attention. I used to go there and drink water out of the spring when I had nothing else to do. I wanted the water for my herders, and for the stock we watered at other places.

Q. What direction is this Arroyo del Oregano from the Coyote spring?

A. I have said that it is towards the west, and towards the southwest; I have said that several times, and it is not necessary for me to be asked again.

Q. Which is farther west, the Arroyo de la Piedra, or the Arroyo del Oregano that you are talking about?

A. The Arroyo del Oregano is farther west; the Arroyo de la Piedra is to the east, beyond the spring of San Marcos.

Q. How much further west is the Arroyo del Oregano than the Arroyo de la Piedra?

A. I do not know; I have said that I did not pay close attention; I used to travel on horseback, and I used sometimes to take an hour, and sometimes half an hour.

Q. And you did not pay much attention to that?

A. No, I did not pay much attention to what was not my business, except the matter of the stock.

Q. Does the Arroyo del Oregano do into the Arroyo de la Piedra?

A. I think so.

Q. Where does it go into it?

A. I do not know; I told you that I did not pay close attention; I have not gone to the place where they join.

Q. What does the Arroyo de la Piedra run into?

A. It comes into the same arroyo.

Q. Do these arroyos drain into that same arroyo?

A. What arroyo is that?

Q. The Arroyo de la Vasquez: do these other arroyos come into the Arroyo de la Vasquez?

A. It is up here this way, and the water does not travel uphill.

124 Q. You spoke of a ruin down there?

A. Yes.

Q. How far is this ruin from the Arroyo del Oregano, about how far?

A. I do not know how far, but it is near to it.

Q. Is it as much as a hundred yards?

A. It is further.

Q. Is it as much as 200 varas?

A. I do not know. It may be five hundred or 400 or 100 or as much as a mile; I do not know the distance; I did not measure it; I am not a surveyor.

Q. You know how much a league is, don't you?

A. I do not know how much a league is; I heard it said that a mile is a thousand and odd yards.

Q. You know how much a yard is, don't you?

A. I know it is four feet.

Q. Is this ruin that you spoke of as much as a yard from the Arroyo del Oregano?

A. I have said I never measured it; I say that the ruins of that house are at the spring of Coyote; that is what I said and what I repeat now.

Q. How far is that from the Arroyo del Oregano?

A. I have not measured it, and I said I do not know how far it is.

Q. How far are they from the Ojo del Coyote?

A. I do not know; they are near.

Q. Give your best judgment?

A. They are near, I say.

Q. As much as a hundred yards from it?

A. I do not know. They are near the springs.

Q. As much as a thousand yards from the springs?

A. They may be three thousand, if you please, but they are quite close to the spring; I know what close is.

Q. Are they as far as from here to the plaza of the city of Santa Fé, down to the spring?

A. I do not know; I say that the ruins are close to the spring. The people that lived there drank from the spring.

Q. Are the ruins as far as from here to that door from the spring?

A. I do not know; I say that they are close; they may be as far as from here to the door.

Q. What direction are they from that spring?

A. Towards the east.

125 Q. The arroyo runs towards the east, in which the spring is located, does it not?

A. I have said that all these drain from the hill or cerres coming from the arroyo, downhill.

Q. This arroyo on which the Ojo del Coyote is located, runs towards the west from the east, by the Ojo del Coyote, does it not?

A. I do not know what way it runs. I never go there when it rains, and it is not running. I have been there in the winter.

Q. You cannot tell how an arroyo runs, unless you are there when it rains; is that so?

A. When I see which way its downward course is, the rocks flow down.

Q. How do the rocks run down this arroyo?

A. When it rains it runs downward, and when there is plenty of snow, it also runs that way.

Q. It runs towards the west, does it?

A. I do not — if it runs towards the west, but it runs downward; if you want it to run to the west, why, let it do so.

Q. And you do not know whether this arroyo runs to the east or to the west, at this place?

A. It runs downward, whenever it rains. I never paid much attention. I never was very much in love with that arroyo, or with that spring.

Q. You were never there very much, were you?

A. No, I knew it, and I was there one time for four or five days after the herders, to transfer them and send them above.

Q. That was the only time that you were there, was it.

A. I was there several times, passing by it. I did not pay much attention to it.

Q. The year you stopped there was the time you mentioned?

A. Yes.

Q. On which side of this arroyo is the Ojo del Coyote located, on the north side or on the south side?

A. The arroyo is west of the spring.

Q. And the Cuesta Alta, where is that with respect to the Cuesta del Oregano?

A. I do not know who gave it that name; people formerly gave it that name; I was not there; I do not know who christened it.

126 Q. What I asked you was, if you did not state a moment ago that the Arroyo del Oregano was on the west side of the Arroyo del Coyote?

A. It is a little below, more towards the west; I have said that before, and I repeat it.

Q. This spring, then, is not on an arroyo?

A. I told you that I did not know how it is, because I was not there myself very long. I just established the ranch for the herders, and did not pay close attention to it.

Q. Now, you spoke of the Cuesta del Oregano; where is that with respect to the Arroyo del Oregano?

A. It is the slope of the Arroyo del Oregano itself. They call it the Cuesta Alta. I do not know if it is high or low. I went over it myself.

Q. Who called it the Cuesta Alta?

A. I do not know.

Q. Is that what is was generally called by, the Cuesta Alta?

A. That is what they call it, and that is how I knew it.

Q. What direction is this Cuesta del Oregano, or Cuesta Alta, from the Arroyo del Oregano?

A. It is downward from the arroyo. There are many ups and downs; I did not go over it with wagons myself.

Q. How far is it from this cuesta to the Ojo del Coyote?

A. I do not know.

Q. Is it as much as a mile?

A. I do not know; that is what they call it there; I do not know how far it is to it.

Q. Which was nearer to the Ojo del Coyote; the Arroyo del Oregano or the Cuesta del Oregano?

A. The arroyo.

Q. Have you heard it named or called by that?

A. That is as I heard it called; I do not know the Arroyo Bueno; I do not know whether it is the Arroyo Pueblo or Bueno; that is what they call it there, the Arroyo del Oregano, and that is how I knew it, and I know it by that name. Don Manuel Baca told me that was the Arroyo del Oregano.

Q. Did you ever hear it called the Arroyo del Bueno?

A. No, I never heard it called so, nor by any other name.

Q. Do you know where the Cerro de la Piedra is down there?

127 A. There are rocks on every hill; I do not know which one is the Cerro de la Piedra.

Q. You do not know any cerro called by that name?

A. No.

Q. Do you know where the Arroyo de los Cerrillos is located?

A. I know where the Arroyo de los Cerrillos is situated, and I also know that a big rock by the side of the arroyo that was called by the people from La Cienega, the Peñasco de Vargas. It is a very abrupt and perpendicular rock.

Q. I asked you about an arroyo; I did not ask you about a peñasco.

A. You are asking me if I heard the names of rocks and hills.

Q. I asked you if you knew the Arroyo de los Cerrillos?

A. I know the hills that were to the side of the house of Don Manuel Delgado. I have not known the cerros. It is the same cañada that comes into the La Cienega river, and they are the cerros I know. I do not know the new place.

Q. Are you related to the Leyba family?

A. No.

Q. Did you know Juan Angel Leyba?

A. I did not know him.

Q. Salvador Leyba?

A. I knew him in Peña Blanca. They used to call him "Mujerote."

Q. He was the same Salvador Leyba that died here a year or so ago?

A. I do not know if it is the same one.

Q. The Salvador Leyba that used to be an acrobat, who used to give acrobatic performances in Mexico and New Mexico, and gave acrobatic performances here?

A. He used to live here with an old woman by the name of —— ——, and they were no relatives of mine.

Q. How did you happen to come over from San Miguel county to testify in this case?

A. They were informed that I perhaps knew something, and from here they sent a request to me that I might come. Mr. Larazola sent to my house for me, and Jose de la Cruz Pino informed them that I knew something, and that other parties knew something, and that is how I happened to come here as a witness; I misunderstood this interpreter, when the question was asked me, when I was
128 asked about Mariano F. Sena; I understood that what the interpreter spoke to me was, if I had given to Mariano Sena to get from him what I was to say, but I am here by the request of Mariano Sena, and that I talked to Mariano Sena since I came here, and that Mariano Sena is paying my expenses on my trip; I spoke to him as early as Sunday, because I came here Saturday night. That letter I received from Mr. Larazola, and that is what I want to explain to the court.

Q. Did you ever talk to Mariano Sena over in San Miguel county?

A. No, not there; here, when I presented to him the letter of Mr. Larazola; I had not known him there until I got that letter to him.

Q. Who told you to make this explanation which you have just made on the stand?

A. My own natural understanding, under my conscience; nobody ever teaches me how to pray.

Q. Who called your attention to the fact that you had made a mistake in your testimony before?

A. My own conviction, and my conscience; nobody teaches me to pray; I know what I can tell.

Q. You spoke of Don Manuel Delgado telling you certain things?

A. Yes, I was a very close, intimate friend of him, and I have been very often to his house, and of his son.

Q. Do you know when he died?

A. It is about four or five years that he died; I do not recollect now when he died.

Q. Where did he die?

A. Here at his house at Los Golandrinas, as it is called.

Q. What was his full name?

A. Manuel Baca Delgado y Terrus.

Q. Do you know Don Felipe Delgado, who lives here in town?

A. I know the young man, the old man is dead. I know Don Fernando, Pablo, and Don Simon; I know all the family.

Q. What was his father's name?

A. I think it was the same, Don Manuel Delgado; his wife was Maria de la Cruz Baca.

Q. Was he the Manuel Delgado Baca you mentioned as having given you the information?

A. No, I mentioned Manuel Baca y Torres.

Q. This is the party who gave you the information about the Arroyo del Oregano?

A. Yes.

129 Q. Did you know Felipe Delgado when he lived down there near Cienega?

A. What Felipe Delgado do you mean; I know this one here; the one that I know was the husband of Dona Bonavida; I know him in Cerrillos.

Q. Did you know any of them down here at Cienega?

A. I knew them at Cerrillos and La Cienega.

Q. By Cerrillos you mean what is Bonanza now; maybe it is La Bonanza; that was from the mill beyond, but now they call it Bonanza; it is very different from what I knew it.

Redirect examination by Mr. CLANCY:

Q. I understood you to say on your cross-examination that there was a road from San Marcos spring to the Arroyo de la Piedra; is that correct?

A. It is a trail for horseback; we used to call it a road; it is a trail; it is a trail that was traveled over by the stock; it was not a wagon road.

Q. In which direction from San Marcos spring did that trail run; does it run more in the direction of where the sun rises or towards where the sun sets?

A. The road going to the old mill goes south, and this trail went up to the east, to the place where the Baros were, towards the Arroyo de la Piedra; they used to have a cattle ranch there for the cattle of Don Jose Baca; this man here by the name of Sena Leyba he used to be a herder and he was there at the ranch several times; he knows all that country well.

Q. In what place is this rock of which you spoke which was called Pinnacle de Vargas and the place where all those arroyos are about to come out from all those hills where formerly there were copper and quicksilver mines?

A. I think it is where the town of Los Cerrillos now is and that is where this big bluff or rock is; it is opposite or rather fronting on the coal-mines hills, the cuchillo puerquos; that is what the Mexicans used to call it; I understand they gave it another name now; I have not been over that place for many years.

130 Q. Since you came here to Santa Fe last Saturday night, have you talked with any one else except Mariano F. Sena about the things of which you have testified here today?

A. With Mr. Clancy; also with the other Mr. Clancy; they asked me several questions about what I know.

Q. State whether or not any one has ever directed what you must testify here?

A. Nobody is able to enforce me; I have so much understanding that I know what I can tell; I did not come here with any other interest except to give my testimony as I understand it.

Q. Has any one at any time dared to tell you what your testimony should be?

A. No, sir; I do not believe any one would dare to.

R. B. WILLISON sworn on the part of the plaintiff testified upon direct examination by Mr. Calvey as follows:

Q. State your name, age, residence and occupation?
A. Robert B. Willison; 54 years of age; Santa Fé, New Mexico, civil engineer.
Q. How long have you lived in Santa Fé?
A. 33 years last October.
Q. During that time have you been a civil engineer and surveyor?
A. I have always practiced my profession connected with mining and land business here.
Q. Are you familiar with the country around south of Santa Fé as far as the Galisteo river?
A. I am.
Q. Are you acquainted with the lands in question in this suit?
A. I am.
Q. Have you ever made an examination of the grant for the papers in this suit?
A. I have.
Q. And from these grant papers do you know the boundary calls of the grant claimed here?
A. I do.
Q. Will you state what those boundary calls are?
A. On the east the San Marcos road; on the north the road going from Pecos towards the Cerrillos; on the west the lands of the Pueblo Viejo de la Cienega, and on the south the Cuesta del Oregano.
Q. Do you know a spring in this grant as claimed situated within the county of Santa Fé known as the San Marcos spring?
A. I do.
131 Q. I believe that you have stated that you know where the lands of La Cienega are?
A. I know where the Pueblo Viejo de la Cienega is situated and I have seen old documents so that I could give approximately some points.
Q. You have stated that the southern boundary call of this grant is the Arroyo de Cuesta del Oregano; do you know where that arroyo is?
A. I do as shown to me.
Q. Will you state where that arroyo is with reference to where the spring of San Marcos is?
A. It is north, a trifle over a mile, something over a mile.
Q. Between the San Marcos spring to the north is there any other spring that you are acquainted with?
A. I know of no others than the San Marcos spring.
Q. To the north from the San Marcos spring is there any other spring that you are acquainted with?
A. Slightly to the west of north the Ojo del Coyote.
Q. Do you know where the Coyote spring is located?
A. I do.
Q. Will you state where it is located?
A. It is located in an arroyo or canyon some 400 yards west of

the arroyo leading from San Marcos to Cerrillos and between a ¼ of a mile and ½ a mile, west from where it joins the Arroyo Gallinas.

Q. Will you state to the court the surroundings of that spring so far as the topography of the country is concerned?

A. The bearing of the arroyo in which the spring is situated is nearly west, a little south of west; that arroyo is formed by a number of arroyos coming from the north and east; on the south going towards San Marcos spring you pass considerable elevations rising immediately in the arroyo in which the spring is situated.

Q. You have said that you knew where the Cuesta de la Oregano is with reference to the Coyote spring?

A. It is to the east, northeast, heading these arroyos or this
132 main arroyo in which is situated that Coyote spring.

Q. Do you know the names of these arroyos?

A. I know the name of but one of them that has been pointed out to me as the Arroyo del Oregano.

Q. Where is this Arroyo del Oregano with reference to the Coyote spring?

A. It is immediately above the Arroyo del Oregano, as being the main arroyo, the Coyote spring is situated in the Arroyo del Oregano, that is the particular one that the name is applied to; the main arroyo itself is about 300 yards above the spring.

Q. When did you first hear the names of the Cuesta del Oregano and the arroyo of the Cuesta del Oregano and of the Coyote spring?

A. The Coyote spring I have known for about 30 years; I do not remember of having heard of the Cuesta del Oregano or Arroyo del Oregano until some 7 years ago; I might have heard of it, but do not remember it.

Q. When did you first visit the Coyote spring?

A. In the winter of 1869 and '70.

Q. I will ask you at the time you first visited that spring if there were evidences of habitation in that locality?

A. Yes, sir.

Q. Will you state to the court what they were?

A. On the hill, rocky slope leading down immediately to the spring there were quite extensive ruins of what appeared to have been habitations; there was one chimney standing at least 9 feet high at that time with a fireplace, evidently been used as a foreplace within a house.

Q. What was the extent of these ruins if you recollect?

A. They were sufficient to attract my attention to convince me that within quite a recent period they had been inhabited.

Q. Do you know who inhabited these houses the ruins of which were situated at the Coyote spring?

A. I do not.

Q. Have you any information on that subject?

Objection to that. Overruled.

A. I was informed some 7 years ago by Don Manuel Baca y Delgado that they had been occupied by the descendants of the original

grantee in this case as well as some other ruins, corrals and
133 so on, evidences of corrals, between a ¼ of a mile and ½ a mile to the east which he pointed out to me as the Arroyo del Oregano, in the margin of the Arroyo del Oregano.

Q. Do you state by whom you were told that this was the Arroyo of the Cuesta del Oregano?

A. No, sir; I have not stated that.

Q. Will you state by whom you were told that was the arroyo of the Cuesta del Oregano?

Same objection.

A. By Don Manuel Baca y Delgado.

Q. Did you ever hear of the grant of lands in this vicinity known as the Sebastian de Vargas?

A. I have.

Q. Are you acquainted with the boundaries of that grant as claimed by the petitioners in this suit heretofore pending in this court?

A. I am.

Q. Can you state to the court what is the western boundary of the lands of Sebastian de Vargas, and also state to the court how you know that to be the western boundary, and I will also ask you to make an examination of these plats which are admitted to be on file in the land office here in town, and designate on these plats where that western boundary would be?

A. Yes, sir; I can do so; I was called upon by the attorneys for the claimants of the Sebastian de Vargas grant to determine the western boundary of the grant as well as the northern and southern; I examined a great many documents among which was a partition made by Domingo Fernandez for himself as one of the heirs and other heirs to the estate of Sebastian de Vargas; I am not positive but I think the partition was made in year 1857.

Objection to this as narrating the contents of the documents. Just go and state what it is.

A. In making this partition he states that he was at the point known as the Crus del Alamo where the two roads leading to Santa Fé come together; I have been to that point and found the original monument, the cross was gone, I had documentary evidence; in regard to the possessions of the people under the Cienega
134 grant the old papers referred to the Cienega grant, that they extended east to where the water——

Objection to his giving the contents of these old papers.

The COURT: Just state with reference to the plat, that very plat there on the table.

A. On this plat which is small holding number 525 from the point in the road to Los Tanques where the water bursts out it can be discovered exactly from that point to the hill of the Canyon Weguicu, from that a line due south to the road leading from Pecos

to Cerrillos which is the west boundary of the Sebastian de Vargas grant.

Q. Did you have any conversation with any of the people residing in that vicinity at the time you made this survey in regard to this boundary you have testified about?

Objection as immaterial, irrelevant and incompetent.

A. No, sir; I did not have any conversation; they were surprised when I found old monuments, but I had no conversation with them.

Q. When did you last visit the Coyote spring?

A. Last Sunday, the 29th of April.

Q. I will ask you if on last Sunday you discovered evidences of any habitation in the neighborhood of the springs?

A. There was very little evidence of ever having been habitations there.

Q. I believe that you stated that you visited the Coyote spring about 6 years ago?

A. Yes, sir; 6 or 7 years ago.

Q. Will you state the appearance of the ruins of these houses, buildings, years ago, and the appearance of the ruins as they were on last Sunday?

A. The ruins as they were years ago and as they appeared 30 years ago, the scattered stones had been hauled away evidently, foundations and everything.

Q. Were there any evidences of habitations of houses that you could see on last Sunday?

A. Yes, sir; still evidences, but very slight compared with what they formerly were.

135 Q. I will ask you if you have any idea of the amount of stone that had been removed from these ruins at the Coyote spring?

A. When I first saw them there had been evidently sufficient for the construction of two or three good ordinary-sized houses, that is as used in this country; now it would not make a foundation for one side of an ordinary room.

Q. I will ask you if you know where the north boundary of the San Mareos grant is?

A. Yes, sir; I do.

Q. In what direction from the north boundary of the San Marcos spring is the Coyote spring?

A. The north boundary of the San Marcos grant being an east and west line the Coyote spring must be north of it.

Q. At what distance, if you are able to state is the north line of the San Marcos grant to the Coyote spring?

A. The present survey of the San Marcos spring I have never seen any of the corners, never looked for them, but I was told by the surveyor that they were practically the same as the preliminary survey that had been made in 1879 I think; that was some 265 yards south from the spring.

Q. You have mentioned the road from Pecos to Cerrillos; I will

ask you if that road is correctly laid down on this plat, Defendant's Exhibit B?

A. I should say the northeast corner of the grant was further east than the survey would show, the first thing.

Q. Approximately is that plat correct according to your knowledge of the country?

A. Yes, sir; it embraces the same section of country; I see the Coyote spring is left to the south of this map line which I do not consider proper.

Q. Are you acquainted with the road named on that map as the San Marcos road?

A. I am.

Q. For how long have you known that road?

A. 33 or 34 years; ever since I have been in the country.

Q. By what name was that road known when you first heard of it?

136 A. The road to the old placers, the first watering, stopping place going from here or coming from there here.

Q. Are you acquainted with the roads shown on that map and designated as the road from Pecos to Cerrillos?

A. I am.

Q. Did you travel over that road?

A. Often.

Q. Is that road shown on that map correct approximately?

A. Yes, sir; approximately.

Q. At the time of your first visit to the Coyote spring, did you observe any signs of the lands having been cultivated in that vicinity?

A. Not to my recollection.

Q. At the time of your last visit to the Coyote spring did you see any evidences of the lands having been cultivated?

A. There are ranches taken up within a mile or two of that running up to three or four miles.

Q. In what direction from the Coyote spring?

A. To the north.

Q. I will ask you whether the lands thus being cultivated is being cultivated by irrigation?

A. It is not.

Q. Would it be possible to cultivate any lands in the immediate vicinity of the Coyote spring by irrigation?

A. It would not except by artesian flow of water.

Q. But as I understand you there is not sufficient surface flow to use in irrigating ditches?

A. Nor a permanent water; you might use flood water.

Q. I will get you to describe just at what point according to these public land surveys with reference to the public land surveys, the Cruz del Alamo is to which you testified, in what section, township, range and quarter section?

A. The Cruz del Alamo bears north 51 degrees, 30′ west, 24 chains, 59 links, from the ¼-section corner between sections 27 and 28, township 16 north, range 8 east.

Q. Did you state how far you ran that line south of the
137 western boundary of the De Vargas grant?

A. To the intersection at the line with the road leading from Pecos to Cerrillos.

Cross-examination by Mr. POPE:

Q. When did you say you came to this country?

A. October 13, 1866.

Q. Where have you lived ever since?

A. With the exception of about 3 years when I was doing business in Silver City Santa Fé has been my headquarters.

Q. I believe that you stated that the first time you heard of this Arroyo or Cuesta del Oregano was about 7 years ago?

A. The first time that I distinctly recollect knowing it by that name.

Q. Your first attention was called to it in connection with the De Vargas case was it not?

A. Yes, sir.

Q. In the investigation of that case?

A. Yes, sir.

Q. You were present at the trial of this De Vargas case were you not?

A. I was a witness.

Q. You testified in the De Vargas case did you not?

A. Yes, sir.

Q. Your testimony in the De Vargas case covered what you have testified to today and more too, did it not?

A. It did.

Q. What you have testified to as lands claimed by the De Vargas heirs you mean the lands that were claimed before the Court of Private Land Claims, that case, did you not?

A. I mean the land that was claimed and passed on by that court.

Q. Are you interested in this claim now on trial either directly or indirectly?

A. I am not.

Q. Have you ever made any plats of this claim?

A. I did; when I discovered the original archive in examining the De Vargas case at that time I made two or three trips down there and located the boundaries and made several plats.

Q. I will get you to look at the plat attached to the petition in this case and state if that is a copy of a plat you made.

A. Yes, sir; that is a copy; I did not make this plat, but it is a copy.

138 Q. You spoke of discovering the archive; when was that discovery made?

A. After the first hearing of the De Vargas case; I do not remember exactly the date.

Q. It was after the case was decided by the court and it was upon a motion for rehearing?

A. Yes, sir.

Q. That was about 5 years ago was it not?

A. 5 or 6, 6 probably.

Q. This plat shows the pu*b*elo of San Marcos lands as coming up to the south boundary of this claim now on trial?

A. Yes, sir.

Q. Is that correct according to your idea of it?

A. The San Marcos preliminary survey had been made and I found where that line was and this is approximately correct.

Q. You made the two claims coterminous?

A. Yes, sir.

Q. Where is this Coyote spring with reference to any arroyo?

A. It is situated in the—bursts out from the large dyke that crosses the rocky arroyo.

Q. Is it not in the bed of the arroyo?

A. It bursts from dykes, some of the water bursts 5 feet from the bed of the arroyo right from the solid rock; it crosses the arroyo on either side the lands is rising to the south and to the north from that point; there are a number of seapages there; this dyke brings the water to the surface and makes a spring.

Q. Are there well-defined mounds or banks to the arroyo?

A. Yes, sir.

Q. Where is this spring with respect to being midway between these banks from the north to the south?

A. At different points; at the present, last Sunday, there were some three or four different points at which water was close up by that arroyo.

Q. Midway would leave some of this spring east and some of it north?

A. Yes, sir; if the boundary line was the center of the arroyo.

Q. These ranchmen down there that live near that spring,
139 they all have wells, have they not?

A. There are 2 wells that I know of that have water.

Q. You do not know as to others?

A. No, sir.

Q. Now, do you know of an arroyo called the Arroyo de la Piedra?

A. I do.

Q. Where is that with respect to the Coyote spring?

A. Some 600 or 650 yar-s to the southwest from the Coyote spring; at the junction of the same arroyo and the Arroyo Gallinas; from there it continues on as the Canyon de la Piedra or Arroyo de la Piedra.

Q. Is the most easterly of these two arroyos the Arroyo de la Piedra or the Arroyo Gallinas?

A. The Arroyo Gallinas forms the Arroyo de la Piedra coming from the northeast I understand; they are the same arroyo in fact.

Q. Where is the junction of the Arroyo de la Piedra and the Arroyo de la Gallina with respect to the Coyote spring?

A. There is no junction of the Arroyo de la Piedra and the Arroyo de la Gallina; the Arroyo de la Piedra joins the Arroyo de la

Gallina and the Arroyo de la Piedra from that point until it enters the San Marcos arroyo it is called the Arroyo de la Piedra.

Q. What is the name of the arroyo in which the Coyote spring is located?

A. I have been told, was told last Sunday, by a young man herding sheep there, it was called the Canyon de los Arroyos.

Q. How far is the Arroyo del Oregano to which you have testified from the Coyote spring?

A. About 300 yards to the northeast from the Coyote spring, coming from the east, northeast.

Q. And where with respect to the Coyote spring?

A. About 300 yards to the northeast.

Q. Did you hear of a cañada called the Canada del Coyote?

A. I never heard of that; in fact there is no cañada near the Coyote spring.

Q. Did you hear of the Arroyo del Coyote?

A. Never heard of it.

Q. Look at this map introduced in evidence as Defendants' Exhibit A; I will get you to indicate on that map just where
140 the Arroyo del Oregano that you spoke of comes into the arroyo that runs by the Ojo del Coyote?

A. Marked "arroyo" in red ink on Defendants' Exhibit A.

Q. Now will you mark the junction of that arroyo with the Canyon de los Arroyos that you referred to, that arroyo that runs by the Ojo del Coyote?

A. I have marked it A in red ink.

Q. Is the proper length of that arroyo indicated?

A. I should judge it did not extend further back to exceed a mile from the Coyote spring.

Q. Now, look on this map marked Defendants' Exhibit A and state whether or not the Arroyo de la Piedra is correctly located on that?

A. It is in all probability properly located down here.

Q. The arroyo in which the Coyote spring is, what is it called above that?

A. The Arroyo de la Gallina; the Arroyo de la Gallinas is above this arroyo coming from the Ojo del Coyote.

Q. I will ask you to look at the map you identified attached to the plaintiff's petition and ask you whether or not that does not show the Coyote spring is located on the Arroyo de la Piedra?

A. I am not responsible for this copy.

Q. Have you the original of that map?

A. I do not know that I have.

Q. Would you be willing to swear that that copy is not correct?

A. I am willing to swear that that is not correct.

Q. I mean a correct copy of your copy?

A. Yes, sir; I never did put anything of that kind in my map and make such a mistake.

Q. You have made mistakes however?

A. Yes, sir; not of that kind.

Q. Have you the original of that map anywhere?

A. Yes, sir; I have the original in my house; when you come down to the point in dispute at the present time this is not the same as my map.

Q. Then you do not consider that map attached to the plaintiff's petition as correct?

A. No, sir; I do not.

Q. You were asked about some ruins; where are these ruins with respect to the Ojo del Coyote?

A. I do not know whether I have said or not; they are
141 from 75 feet to 300 feet on a rocky point looking down immediately above and to the north and east of the springs.

Q. What would you say as to the location on this map, Defendants' Exhibit A, as properly indicating the ruins that you have referred to marked "Old dugout built by Francisco Montoya"?

A. I do not know anything about a dugout built by Francisco Montoya.

Q. How old was this Manuel Baca y Delgado that you referred to at the time you had that conversation with him?

A. Very nearly 80; 78 I believe if I remember correctly.

Q. He is the man that testified in the De Vargas case, was he not?

A. Yes, sir.

Mr. REYNOLDS:

Q. Do you remember you testified on the filing of the supplemental petition in the De Vargas case in November, 1893, by Mr. Purdy?

A. Yes, sir; I remember.

Q. Do you remember what claim was made at that time of the filing of the supplemental petition?

A. For the western portion of the De Vargas grant which had been rejected or reduced by the court; I prepared that map, and it was claimed according to the map that I prepared; the lands claimed in the De Vargas grant were as I recollect the lands of Tomas de Sena and Juan de Urioste; they were treated as heirs and descendants of De Vargas.

Q. And the grant then in the supplemental petition was described and located at the Arroyo Hondo, was it not?

A. If you will refer to the papers you will find that I never surveyed the Arroyo Hondo grant.

Q. You did not?

A. No, sir; the western boundary of the De Vargas grant as claimed I got from conveyances from the Senas and Urioste; the recitals in those conveyances were treated in the land office of the Mexican and our Government as correct until 1857; I went to the records for them, and that is the way I determined the positions of these places.

142 Q. You did not do it by oral testimony?

A. No, sir; the recitals in the deeds of Urioste and Tomas de Sena so far as the eastern boundary was concerned; they had simply purchased out to the Camino de en Medio, simply a small

part of the Sebastian de Vargas grant that was ever covered by this land grant.

Q. The location of the west boundary of the De Vargas grant was fixed by this court was it not?

A. No, sir; it was not; but it was held for 150 years up — 1857 when a partition was made of the De Vargas grant.

Q. You got your location of the west boundary of the De Vargas grant and the west portion of it, you say, from the conveyances that were made to Sena and Urioste and you got it from other documents?

A. I got it from recitals in the partition made in 1857; that is my understanding.

Q. You did not then pay any attention to the recitals in the grant?

A. Sena and Urioste as I understand it had nothing west so far as I recollect of the Camino de en Medio.

Q. What Sena was that?

A. Tomas de Sena and Bernadino Sena afterwards claimed land west of that.

Q. You say you have no recollection as to the claim that was made for the western portion of the De Vargas grant through whom it was claimed?

A. I have no recollection of it as being claimed as the Arroyo Hondo grant.

Q. You have no recollection as to the claim of the De Vargas grant being made through deeds from Senas and from Urioste?

A. Certainly that all appears of record filed in the case, and that was not described as the Arroyo Hondo grant, not to my knowledge.

Mr. CLANCY:

Q. Do you recollect whether or not these documents you have referred to by which you established the western boundary of the De Vargas grant were introduced in evidence at the time of the trial of the De Vargas grant?

143 A. I am not clear whether they were or not; I am not positive whether they were or not; I thought they should have been, but whether they were or not I do not know.

Mr. REYNOLDS:

Q. If the very documents that you have mentioned are mentioned by Mr. Justice Sluss specifically in his opinion and taken into consideration they must have been introduced in evidence were they not (hands witness copy of said opinion)?

A. That must have been by the dereliction of the attorneys in bringing them out; I am satisfied that they were.

Q. Now did you testify more than once in the De Vargas case?

A. I am not positive whether I testified in the first instance or not; I am not positive; I do not remember at all.

Q. The only time you testified in the *the* De Vargas case was in rebuttal of the Government's case was it not?

A. That is my recollection; I certainly did in regard to the plat that I made.

Q. Do you know who examined you in chief?

A. I am not positive whether it was Major Purdy or Mr. Earl; I cannot remember sufficiently to say which.

Q. Do you remember whether you testified at all with reference to this western boundary of the De Vargas grant and the manner in which you established it?

A. I certainly testified as to this on the rehearing, on the new trial.

Q. Do you know whether there was ever any testimony taken on the new trial?

A. Yes, sir; I am satisfied there was; I was called in to identify my map that I had prepared.

Q. Then you must have testified twice. I have what purports to be the transcript of your testimony here in the De Vargas case in rebuttal of the Government's case; take that and see whether you can find anything about your map or the west boundary of that grant (hands witness said transcript)?

A. That was not introduced in the first trial at all and has no reference to the plat on the new trial.

144 Q. Was there any new trial ever granted?

A. It was my understanding there was; yes, sir, otherwise Justice Sluss could not have referred to it in the testimony in that trial.

Q. In this transcript of your testimony here as shown you, you make no reference to your map, do you?

A. No, sir; I had not prepared the first map at all then.

Q. Was your map that you prepared ever used on the trial of the case in which testimony was taken, or was it simply used in argument by Mr. Vroom and Mr. Purdy on the motion for rehearing?

Objection to that because it is a matter of record. Overruled.

A. My recollection is not clear on that; I do not remember.

Q. Do you know whether a new trial was had on that or not?

A. It is my understanding that there was a new trial.

Mr. CLANCY:

Q. Were there any other documents other than those mentioned in the opinion of Justice Sluss in the De Vargas case from which you derived information at the time you located this western boundary of the De Vargas grant?

A. Yes, sir; I had seen the deeds of every piece of land from 5 acres up out there in private hands; probably 50 deeds in all, letters and such things.

Q. Did you make an examination of what purports to be a transcript of the evidence taken on the trial of the De Vargas case which was just handed to you by Mr. Reynolds, of your testimony?

A. I have.

Q. On the other trial of the De Vargas case did you testify to anything different from the testimony contained in this transcript?

A. I testified in regard to the west and south boundaries on the rehearing of the De Vargas case; this was only a fragment of the original De Vargas grant, on the first trial.

AUGUSTINE RAMIREZ sworn on the part of the plaintiff testified upon direct examination by Mr. Clancy as follows:

Q. State your name, age and residence?
145 A. Augustine Ramirez; 53 years; Galisteo.
Q. How long have you lived at G-listeo?
A. I have lived there for about 8 or 10 years.
Q. Where did you live before you went to Galisteo?
A. I lived in Golden.
Q. What are the names of your father and mother?
A. Serafin Ramirez and of my mother Antonia Leyba.
Q. Do you know who the mother of your mother was?
A. Yes.
Q. What was her name?
A. Josefa Leyba.
Q. Do you know who the parents of Josefa Leyba were?
A. Yes.
Q. Who were they?
A. He was Salvador Antonio Leyba.
Q. Do you know who his father was?
A. Yes.
Q. What was his name?
A. Simon was his name; Simon was his father.
Q. Do you know who the father of Simon was?
A. Yes.
Q. Who was he?
A. Jose Leyba.
Q. Do you know whether your mother had any brothers and sisters?
A. Yes.
Q. What were their names?
A. One of them, Apolonia Leyba and a brother, Jesus Leyba.
Q. Have you ever known a man named Salvador Leyba who lived at Pena Blanca?
A. Yes.
Q. Was he a relative of yours?
A. Yes.
Q. What relationship to you?
A. He was an uncle of my mother.
Q. Do you know who his father was?
A. Yes.
Q. What was his name?
A. Juan Angle.
Q. Who was the father of Juan Angle?
A. Salvador.
Q. Is Juan Angle living or dead?
A. He is dead; he was killed by the Indian-.

Q. Do you know where he was killed by the Indians?

A. What I have heard; yes.

Q. Do you know the time he was killed by the Indians; do you know where it was?

A. At the Cuests del Arkito and Cuesta del Oregano; he
146 was killed there.

Q. Do you know where that place is with reference to the San Marcos spring?

A. Yes; it may be 300 yards more or less to the north of the San Marcos spring; I remember very little of it; it is a long time ago that I passed by there or through there.

Q. Has your family to your knowledge claimed to own any grants or interests in grants in New Mexico?

A. Yes.

Q. Can you state what and where these grants are?

A. I do not remember now.

Q. You do not remember any grants which any of your family claimed to own?

A. No.

Q. How long did you live at the place called Golden?

A. About 4 years.

Q. Where did you live before that?

A. At Una de Gato, at my own ranch there below Golden about 8 miles.

Q. Where were you born?

A. I was born here in Santa Fé.

Q. When did you- father die?

A. He died in 1869.

Q. Where did he live in the latter years of his life?

A. At Tijera in the county of Bernalillo.

Q. Before he lived at Tijera where did he live?

A. In Golden and at San Pedro Viejo also; he moved to Golden from San Pedro Viejo and from Golden to Tijera.

Q. Did you ever hear from your mother or any one else of the family of the Leybas claiming the ownership of a grant?

Objection as leading. Sustained. Ask him if he has ever heard of this grant by name.

Q. Have you ever heard of a grant which was called the Jose Leyba grant?

A. Yes.

Q. Did you ever hear anything about that grant from your mother or members of her family?

A. From my own mother.

Q. What did she tell you about it?

A. That that grant belonged to them, to their grandfather.

Q. Do you know where that grant is situated?

A. Yes.

147 Q. Where is it?

A. It is to the south of Santa Fé here.

Q. How far from Santa Fé?

A. I think about 14 or 15 miles from here.
Q. Where is it situated with reference to the San Marcos spring?
A. It is up to the north from where the Coyote spring is.
Q. Have you ever heard of a place called Publito de los Leybas?
A. Yes.
Q. From whom did you hear that?
A. My own mother.
Q. Where is the *at* pu-ito?
A. I do not know the place; I cannot state where it is, but I heard it by name.
Q. Have you ever heard in the family where Juan Angle Leyba was living at the time the Indians killed him?
A. Yes.
Q. Where was he living?
A. He lived there upon the same property where the Indians killed him; he was going to the placer when they killed him, going up the slope and he was about to go down the slope when they killed him.
Q. How far was it from the place where you understood that he lived to the spot where he was killed?
A. More or less about two or three miles.
Q. Did you- mother's si-ter, Apolonia, ever marry?
A. Yes.
Q. With whom was she married?
A. She was married to a man named Jose Aguilar; he died here.
Q. Is she still living?
A. She also is dead.
Q. Did she have any children?
A. She died before my mother; she had no children; my mother remained there with what belonged to her.
Q. Your mother's brother, Jesus Maria, was he ever married?
A. Yes.
Q. Is he living?
A. He is dead.
Q. Did he have any children?
A. Yes.
Q. Can you tell who they were?
A. Yes, I am going to give those that I can remember; one is Jesus Maria, Jose Antonio, Rosalia and another Manuela I think; I remember these, and Susana is another one.
Q. Are they still living, any of them?
—. Yes, these are living; I do not know if they are at Pena
148 Blanca; I have not been to that place for quite awhile.

Cross-examination by Mr. POPE:

Q. What was your mother's full name?
A. Maria Antonia Leyba.
Q. Maria Antonia Leyba de Ramirez?
A. Yes, sir.

Mr. CLANCY:

Q. Do you know about when Juan Angel Leyba was killed by the Indians?

A. No, sir. I recollect very little about that, but I know that he was killed there.

Q. Was it before you were born?

A. Before I was born.

MAY 4TH, 1900—10 a. m.

AUGUSTINE RAMIREZ still on the stand, and cross-examination by Mr. Reynolds:

Q. What was the name of your grandfather on your mother's side?

A. I do not remember.

Q. What was the name of your grandmother on your mother's side?

A. Josefa Leyba.

Q. You do not know the name of your grandfather on your mother's side?

A. No, sir.

Q. Did your mother never tell you?

A. Yes, sir, she told me, but I do not remember.

Q. How about your great-grandfather on your mother's side?

A. Jose de Leyba.

Q. Do you know anything about your great-great-grandfather on your mother's side?

A. I do not remember; I do not know.

Q. Do you know from anything you have ever heard from your mother?

A. Yes, sir.

Q. What was his name, then, if you heard it from your mother?

A. Jose de Leyba.

Q. How does it happen you are so well posted as to one branch of the family on your mother's side, and not with your grandfather'-?

A. I do not remember it, it is a long time.

Q. You do not know what the name of your ~~k~~other's father was?

Objection because he has been asked that before. Overruled.

A. No, sir, I do not remember. I used to know well, but now I do not remember.

149 Q. How does it happen you do not remember now?

A. Because I do not remember.

Q. You remember your mother's mother and her family very well?

A. Yes, sir.

Q. You know the Leybas very well?

A. Yes, sir.

Q. But you do not remember the names of the other branch of the family on your grandfather's side?

A. No, sir, I do not remember.
Q. Never heard it?
A. I did hear it, but I do not remember it now.
Q. Did your mother ever go by any other name than Leyba?
A. She never used any other name but Leyba de Ramirez.
Q. After your father died, did she ever use any other name?
A. No.
Q. Never signed any other name, to your knowledge?
A. Only that.
Q. Always used the name Leyba de Ramirez?
A. Always.
Q. Included the name Leyba?
A. Yes.
Q. Did she, to your knowledge, ever use the name Leyba?
A. Yes, always.
Q. To your knowledge?
A. Yes.
Q. Never was called anything else?
A. No. She was a Leyba; she could not be anything else.
Q. Did you ever testify as a witness in the case of The United States of America *vs.* The San Pedro and Cañon de Agua Company, in the district court here?
A. Yes.
Q. Did your mother also testify in that case?
A. Yes.
Q. Do you know what name she gave in that case as her name?
A. Leyba.
Q. Were you present when she testified?
A. Yes.
Q. You heard her testify?
A. Yes. If they got her name wrong, that was no fault of mine.
Q. Did you see her sign her name to her deposition, her testimony?
A. Yes.
Q. Do you know what name she signed?
A. Maria Antonia Leyba de Ramirez.
150 Q. Are you certain that she used the name Leyba at all?
A. Yes.
Q. You are certain of that?
A. Yes.
Q. Are you certain that she used the name Ramirez at all?
A. Yes. If it was not set down, it was not her fault.
Q. How old did you say you were, yesterday?
A. 53. I will be 53 the 18th of August.
Q. Are you the Jose Augustine Ramirez, who testified in the case of The United States *vs.* The San Pedro and Cañon del Agua Company in the district court here?
A Yes, as an heir in the cause.
Q. On August 21st, 1883?
A. Yes.

Q. And your mother testified in that same case at the same time, did she not?

A. Yes, she was with me. She was the principal witness.

Q. Are you certain that she signed her testimony in that case and used the name Leyba?

A. Yes, Leyba.

Q. You are certain that she signed that name in that testimony as her own name, Leyba, in the testimony, with reference to herself, and nobody else?

A. Yes, Leyba de Ramirez. If they set another name down, it is not my business.

Mr. POPE:

Q. Do you know Marcos Castillo of this city?

A. Yes.

Q. He was down to Galisteo to see you, a while back, was he not?

A. He has not seen me; he has always seen me in Santa Fé here. I never go with him. I do not like him.

Q. Did you see him down at Galisteo a few weeks ago?

A. No.

Q. Do you swear positively that he never came down to Galisteo to see you a while back?

A. No. I can tell that it is not his face.

Q. When did you first talk with Mariano F. Sena, the plaintiff in this case, about this case?

A. I talked to him on account of his case; at his written request I came for that purpose. He pays all my expenses here, and that is why I came.

Q. When was that?

A. Three days ago.

Q. Didn't you talk with him before that time?

A. No.

Q. Who did you talk with about this case before that time?

151 A. With no one.

Q. You are certain that you never talked with anybody about this case, until you got that letter of Mariano F. Sena?

A. No, I did not talk to any one; I knew this man before.

Q. How did Mariano F. Sena know that you knew him?

A. We knew before.

Q. You had talked with him before?

A. Yes, three years ago.

Q. Were you up here as a witness on the district court, at the time his case was on trial?

A. No, I am here now, and I am here to tell what I know.

Q. But you never talked with Marcos Costillo about this case?

A. Nothing, no.

Mr. CLANCY:

Q. In signing any documents, was it the habit of your mother to write her own name, or to sign by making her mark?

A. She always signed with a cross. She could not write; she touched the pen, made a cross.

ELIGIO SEDILIO, sworn on the part of the plaintiffs, testified upon direct examination by Mr. Clancy as follows:

Q. How old are you?
A. I am 67 years old.
Q. Where do you live?
A. I live here in Santa Fé.
Q. How long have you lived here?
A. Almost all my life my residence has been here.
Q. What is your occupation?
A. Laborer.
Q. Did you ever know a man named William White?
A. I knew Mr. White, the surveyor.
Q. Were you ever in his employ?
A. Yes.
Q. For how many years were you in his employ?
A. I was many times; I was not there by the year.
Q. In what capacity were you in Mr. White's employ?
A. Sometimes I used to go as cook.
Q. Go where?
A. These times he used to go out very often with a chain; sometimes with a flag.
Q. Do you mean that you accompanied him on surveying trips?
A. Yes.
Q. Were you acquainted with a man named Samuel Ellison?
A. Yes.
152 Q. Do you know a man named McMillan?
A. Yes.
Q. Do you know a man named Nasario Gonz-les?
A. Also.
Q. Do you know a man named Manuel Bustamente?
A. I saw him once.
Q. Do you know of a grant of land situated in this county, known as the San Marcos grant?
A. Yes.
Q. State whether or not you ever visited that grant, in company with the gentlemen I have named?
A. I was with Col. McMillan.
Q. What was your business there at that time?
A. I was with a flag then?
Q. What was Mr. McMillan's occupation?
A. He ran the instrument.
Q. Do you mean that he was engaged at that time in surveying?
A. Yes.
Q. What tract of land was he surveying?
A. The San Marcos grant.
Q. What year was that?
A. About 1876.

Q. Do you remember the occasion of the surveying of the north line of the San Marcos grant?

A. Yes.

Q. State all that took place at the time of the surveying of the north line of the San Marcos grant; all the conversation that took place, so far as you can recollect?

Objection as to that, and the conversations that took place, because it is immaterial. Sustained.

Q. I will ask you if you ever heard of any grant, or tract of land lying to the south of the city of Santa Fé, known as the lands of the Leybas?

A. I only heard that once, when we were on that occasion, when we went to survey that grant.

Q. From whom did you hear about the lands of the Leybas?

Objection to that. Overruled.

A. An old man that was *tw*ken there as a witness by Don Nasario Gonzales, at the request of Col. McMillen.

Q. What was his name?

A. Manuel Bustamente.

Q. Do you know how old Manuel Bustamente was at that time?

A. I do not know how old he was; he was very old.

Q. Will you state what Manuel Bustamente said on that occasion?

Objection as to that. Sustained.

Mr. CLANCY: We offer to prove by this witness that on
153 that occasion this old man, Manuel Bustamente, was giving information as to the location of the boundaries of the grant then being surveyed; he declared that the lands north of that grant, and of the place where they fixed the northern boundary of that grant, were the lands of the Leybas.

Q. Do you know a spring down in the neighborhood of the San Marcos grant, called the Coyote spring?

A. Yes.

Q. Where is that spring located?

A. I do not know at what place it is; it is north of the San Marcos spring.

Q. Is it situated on an open plain, or in a cañada, or in a depression; state just how the spring is located?

A. It is to the side of a cañada.

Q. When did you first see that spring?

A. I may have seen it is 1854.

Q. Were you down at that neighborhood at that time?

A. I was working for the Delgados at their ranch.

Q. The first time you visited that Coyote spring, did you observe any evidence of habitation at that neighborhood?

A. There was a ruin.

Q. State where that ruin was with reference to the spring?

A. It was east of the Coyote spring.

Q. What was the extent of these ruins?

A. Perhaps four rooms; I was not near them. I passed by the trail.

Q. How high were the walls of these ruins at that time?

A. In places they were about two feet, and at other places a little higher.

Q. And you say that you should judge the ruins were about four rooms?

A. Yes, about that.

Q. Did you ever hear by whom these houses had been occupied.

The same objection as heretofore made. Overruled.

A. No.

Q. Did you ever hear any name for these ruins?

A. No, nothing. Not until afterwards here in conversation, but I do not think that is within my oath.

Q. How long ago was this conversation?

154 A. Outside here, about four or five days ago, after I came up here to the court.

Mr. CLANCY: I offer in evidence, the decree of this court in case No. 79, the Los Cerrillos grant. (Plaintiff's Exhibit "F.")

I also offer in evidence the decree of this court in case No. 82, the Mesita de Juana Lopez grant (Plaintiff's Exhibit "G").

I also offer in evidence the grant papers in the San Marcos pueblo, which are dated in 1754 (Plaintiff's Exhibit "H").

I also offer in evidence a deed dated November 22nd, 1844, from Domingo Fernandez to Demetrio de la Ora (Plaintiff's Exhibit I).

The Government interposes a general objection to the introduction of each and every one of these papers already tendered by claimant, and asks the same objection to apply to all subsequent tenders, on the ground that they are immaterial, irrelevant and incompetent, and not properly in rebuttal, and in all other respects incompetent to the issues in that case at this time.

I also offer in evidence a deed executed by the second constitutional alcalde of Santa Fé, dated Nov. 23rd, 1846, conveying a portion of the property of the deceased Demetrio de la Ora, to Eugenio Leitendorfer (Plaintiff's Exhibit "J").

I also offer in evidence a deed of partition made by Domingo Fernandez, dated Feb. 5th, 1857, being a partition of the lands among the heirs of his mother Maria Francisca de Sena (Plaintiff's Exhibit "K").

I also offer in evidence the opinion of this court in case No. 6, the Sebastin de Vargas grant (Plaintiff's Exhibit "L").

I also offer in evidence archive No. 180, from the office of the surveyor general (Plaintiff's Exhibit M).

WILLIAM M. TIPTON, sworn on the part of the plaintiffs, testified on direct examination by Mr. Clancy as follows:

Q. On this plat which is marked Defendants' Exhibit B, made by you, can you lay down approximately the Rio de Santa Fé?

A. I can.

Q. Will you do so?

A. I will as far as possible (witness does so).

Q. About how far did you say from the edge of the town you thought that that sketch showed the direction and relative
155 positions of the roads and arroyos?

A. I think I have said about three or four miles. I do not mean by that statement that I drew this plat with the intention of showing the distances from one side to the other, because it is not drawn on a scale, but my understanding as to the course of the Santa Fé river, the Agus Fria road, and the Cerrillos road, is that these roads and that stream would have with respect to each other about the directions that I have shown on this plat, for a distance of some three or four miles to the southwest of the town of Santa Fé, and of the San Marcos road on this plat, would not be so great a distance from town.

Q. How far apart are the two roads that run to the southwest, for that distance; what is the average distance between the two roads?

A. I do not know exactly, as a mere matter of estimate; I have no means of stating accurately. I should think that the distance would be from a mile to more than a mile, but they are nearer, as they approach Santa Fé, than they are further west. They gradually diverge as they run west.

Q. And about what is the distance between the Agua Fria road and the river?

A. The Agua Fria road, right here in the edge of the town, crossses the river this side of the Guadalupe church, and from that point going westerly, the road gradually diverges from the river, until in the vicinity of the town of Agua Fria, which is further west than anything represented on this plat, the road again approaches the river, and comes within 150 yards of it. The distance between the road and the river, varies at different points. For three or four miles it gradually diverges from the river.

Q. Say, within a distance of a mile from the edge of the town, at the Guadalupe church, the two are still quite close together, are they not?

A. Yes, sir. A mile west of the Guadalupe church, the road is further from the river than at the Guadalupe church.

Q. For a distance of a mile beyond the Guadalupe church, there is not a very great distance between the road and the river, is there?

A. No, sir, I think not.

MARIANO F. SENA, recalled for the plaintiff, testified upon
156 direct examination by Mr. Clancy as follows:

Q. There has been introduced in evidence in this case, an affidavit made by you on the 30th of December, 1897, in which it is stated that Maria Antonio Leyba de Ramirez gave you definite information as to her direct lineal descent from Jose de Leyba, who was her great-great-grandfather; I now ask you how you received that information, if you did receive it.

A. I received that information from Augustine Ramirez.

Q. Do you know who prepared this affidavit; who wrote it?

A. I do not remember; I think you or your brother; I do not remember, though.

Q. State why you said in this affidavit that this woman gave you that information.

A. I said at the time of the signing of the affidavit that because, by the conversation I had with Augustine Ramirez, that he had a power of attorney from his mother, and he gave me this information from his mother.

Q. State whether or not you intended at that time, by that affidavit, to convey the idea that you had personally received the information from the mother of Augustine Ramirez?

A. No, sir. It was my intention in that affidavit at that time that this affidavit I signed, the information had been given to me by Augustine Ramirez, because he was getting the information from his mother.

Cross-examination by Mr. POPE:

Q. This is the same Augustine Ramirez that testified here in this case?

A. Yes, sir, he had a power of attorney from his mother in these matters.

Q. Were you here when he was asked about Marcos Costillo?

A. Yes, sir.

Q. Is it not true that you sent Marcos Castillo a few weeks ago to get witnesses for you in this case?

A. No, sir.

Q. Didn't you tell Mr. Ireneo L. Chaves, the deputy clerk of this court, that you had sent Marcos Castillo down to Galisteo for that purpose?

A. No, sir. I sent Marcos Castillo on another errand to Galisteo.

157 Q. What was that errand?

A. He went there about some mining business.

Q. You did not tell Mr. Chaves that he went there to see about getting you a man to testify, just to see a man for you?

A. No, sir.

Q. How long have you known the English language?

A. I do not know; I understood a little English when I left school in 1882.

Q. You have lived here in Santa Fé how long?

A. I have been here all my life except 7 years when I lived in Valencia county.
Q. What official position did you hold in Valencia county?
A. I did not hold any; I was deputy clerk of the probate court.
Q. You are now holding a position under the Government?
A. Yes, sir; clerk of the census supervisers.
Q. Your position requires a knowledge of the English language?
A. Yes, sir.
Q. You profess to know the English language?
A. No, sir; I do not know it all.
Q. You have acted a court interpreter have you not?
A. Yes, sir.
Q. You read and write English?
A. Yes, sir.
Q. You went to school to study English?
A. Yes, sir; I went and studied English; but I learned to talk English afterwards.

Redirect examination by Mr. CLANCY:

Q. Will you state just how you procured the attendance of Mr. Augustibe Ramirez as a witness?
A. I went down there myself and got him; I wrote to him first and he wrote that he could not come because he was sick and I went also and came the next day; I left here on the 3 o'clock train, the 4 o'clock train and went to Galisteo and came back on the 2 o'clock train the next day.

Recross-examination by Mr. POPE:

Q. You know how to interpret Spanish into English and English into Spanish?
A. Yes, sir.
Q. You have acted as interpreter in the courts?
A. I have acted as interpreter in the legislature and in the courts a few times.
158 Q. You have often acted as interpreter before the grand jury?
A. Yes, sir.
Q. You have acted as interpreter in the territorial legislature?
A. Yes, sir; I was hel-ing Mr. Read; I was acting as assistant interpreter to perform that duty.
Q. You also acted as chief clerk?
A. Yes, sir.
Q. Many bills are introduced in Spanish and English and both positions require a knowledge of the English and Spanish languages?
A. Yes, sir; I do not know whether it requires a knowledge of both languages.
Q. You have had occasion to use both languages?
A. Yes, sir; you were reporting for the New Mexican when I was assistant chief clerk and you thought I did the business very well,

and you used to come there every day and you got along very well; I talked both languages and we got along very well.

Mr. BARTLETT: It is admitted that the records of the land office at Santa Fé page 57, an application for mineral patent on the Muniz mine in the Cerillos mining district in Santa Fé county, filed June 23rd, 1892, being situated in the south half of section 21, township 15 north, range 8 east, containing 9.8 acres, and publication was duly made for the proper length of time, approved by the land office, and on December 30, 1899, application to purchase the same property was made and the purchase-money paid, $55.00, and receipt issued, except that the area was 10.04 acres, that having been ascertained by the surveyor to be the proper area instead of 9.8 acres for which application was made; that the records further show a protest filed against the issuance of the patent September 29, 1899, by M. F. Sena; that on December 16, 1899, the receiver and register joined in an opinion dismissing the protest and allowing the American Turquois Company to purchase and notifying the protester by registered letter to appear within 60 days to take an appeal and that the appeal was taken and is now pending before the Commissioner of the General Land Office.

159 Mr. CLANCY: Counsel for the defendants admits the facts, but objects to their admission in evidence as immaterial and irrelevant to any issue in this case.

Mr. REYNOLDS: I offer in evidence a certified copy of the testimony of Augustine Ramirez and of his mother given in the Canon del Agua case in the district court, found in the printed copy of the supreme court record. (Defendants' Exhibit "V.")

Mr. CLANCY: I object to its admission in evidence because not relevant or material to any issue in this case, and if intended for the purpose of contradicting the witnesses Ramirezes, there has not been any proper foundation laid for its introduction, and that it is not proper evidence in rebuttal.

Mr. POPE: We desire to tender in evidence a deed from Jose Serafin Ramirez and wife, Maria Antonia Sandoval, acknowledged on March 7th, 1866, recorded in Book D pages 180 and 181, Santa Fé county records, New Mexico. (Defendants' Exhibit "W.")

Also offer in evidence deed from Jose Serafin Ramirez and Maria Antonia Sandoval, his wife, dated May 19, 1866, recorded in Book D, pages 213 and 214, Santa Fé county records, New Mexico. (Defendants' Exhibit "X.")

Also offer in evidence a deed from Jose Serafin Ramirez and Maria Antonia Sandoval, his wife, acknowledge- May 19, 1866, and recorded in Book D page- 214 and 215 and 216 Santa Fé county recor-s, New Mexico. (Defendants' Exhibit —.)

Objection to their introduction as *eb*ing irrelevant and immaterial to any issue in this case, and because no proper foundation has been laid for their introduction of such documents, and also not proper evidence at this stage of the case.

FERNANDO NOLAN sworn on the part of the plaintiff testified upon direct examination by Mr. Clancy as follows:

160 Q. State your name, age and place of residence?
A. Fernando Nolan; 65 years old; practice law.
Q. Are you acquainted with Augustine Ramirez, the witness who has been here in attendance on this court?
A. Yes, sir.
Q. Were you acquainted with his mother?
A. Yes, sir.
Q. Have you any knowledge or information as to who her parents were?
A. No, sir.
Q. Have you any knowledge as to who her mother was?
A. No, sir.
Q. Q. Do you know what her name was?
A. Donita; I was slightly acquainted with her in 1862; I went with Serafin Ramirez, the husband of this Donita, and I came from Corales, from my uncle Sandoval's, and I remember she used to call him padrino.
Q. Who called him padrino?
A. This Serafin Ramirez's wife, Antonita; I do not know who her mother was at all.
Q. Do you know whether she was any relative of your uncle, Sandoval?
A. Not of my knowledge until she called him padrino, and what we understand it was godfather, I suppose.
Q. And you never heard what her family name was?
A. No, sir.

No cross-examination.

I hereby certify that the above and foregoing 127 pages contain a full, true and correct transcript of all the testimony taken by me on the trial of the above-entitled case in open court.

W. J. McPHERSON,
Official Stenographer.

161 PLAINTIFF'S EX. "A."

Archive No. 441 *of the Surveyor General's Office of New Mexico.*

(No. 140.)

Sr Govr. y Cappn. Genl.:

Villade Sta fee y Maio 29 de 1728 ano ante el Sr. Governador y Capn. Gl. de este Reino se presento este escrito por el contenido en el

Joseph de Leyba, besino desta Villa Dl Sta fee, paresco, ante Vssa, en lamejor forma que aya lugar, en direcho, y almio, convenga, y digo, que en conformidad, Dl Rs. hordenanzas Dl su Mgd. regristo un pedaso De tierras y monte, yermo y despoblado, que cabe media fanega de mais de sembradura, poco mas ó menos, que por la parte

del oriente linda con el camino de San Marcos, y por el sur con un arroyo que llaman Cuesta del Oregano, y por el poniente con tierras de Juan Garcia de las Rivas, y por el norte con tierras de Cappn. Sebastian de Bargas, y por todo avssa. pido y suplico, con todo rendimiento sea miri servido De haserme merced, en nombre de su Magd., de dho pedaso De tierra, para mi, y mis hijos, erederos y subsesores, y se me de la posesion Rl., que en ello resebire bien y merced, con justicia que pido, y juro en forma, no ser de malicia este mi pedimento, y en lo nesesario &a.

JOSEPH DE LEYBA.

Y por su ssa. vista la ubo por presentada y en atension alo questa parte pide mandaya y mando al alcalde mor. desta villa de Santa fee pase al paraje que la parte si ta y reconosca la tierra que pide con sitacion de los in mediatos y siendo sin perjuicio de tercero que mejor derecho tenga en nombre de su Magd. que Dios gde. le ago mersed de la que pide con tal que la pueble dentro del termino que dispone Rl. ordenansas de la dha tierra le entre en posesion Rl. y personal la qual pondra al pie por dilijencia asi lo decreto mdo. y firmo dho so. por ante mi el presente sso. Govor. y guerra. Doi fee.

BUSTAMANTE.

Por mdo del Sr Govor y Capn. Gl.

ANTO DE GRRUSAGA,
So de Govon y Guerra.

En la villa de Sta fee en el dia viente y zinco del mes de Mayo de Mill setezientos y veinte y ocho años antte mi el Capn. Diego Arias de Quiros Alcalde Mor y Capn. Agrra de dha villa actuando ante mi. como Juez Recepr. con los testigos ynfrascriptos de mi asistencia, en cumplimto. del auto de ariva provei do pr. el Sr. Governdr. y Cappn. Gral. Dn Jun. Domingo de Bustamte. pose a dar la posesion que pide Joseph de leyba en su petision llegue al puesto y paraje quel suplicante pide, llevando en mi compania a Jun Manuel Chirinos y al Capn. Sebastian de Vargas y bisto las tierras y monte que pide el dho suplicante asi en presencia de los dhos le caji de la mano asiendo las seremonias acostumbradas arancando sacate tirando piedras y dando boses en señal de suyo le di la posezion real en nombre de su Magd. Dios le guarde para que en su nombre y Real palabra le gose el suso dho sus hijos y herederos; y para que conste lo firme como Juez Rezepr. con los testigos ynfraescriptos de mi asistenzia pr. falta de escrino. Puco. ni Rl que no lo ay en este rno. y ba en papel comn. pr. no sorrer de ningun sello en estas partes; Doy fee.

DIEGO ARIAS DE QUIROS,
Juez Receptor.

JUN MANUEL CHIRINOS.
JU JOSEPH LOBATO.

(Endorsed:) Merzed y posezion a fabor De Joseph Deleyba.

162 *Translation of Archive No.* 441 *of the Surveyor General's Office of New Mexico.*

City of Santa Fé, May 29, 1728 before the governor and captain general of this kingdom, there was presented this petition with its contents.

Joseph de Leyba, resident of the city of Santa Fé, appear before Your Excellency in due legal form, and state that in accordance with the royal ordinances of His Royal Majesty, I enter a piece of land and wood, vacant and unsettled, enough for half a fanega of corn-planting land, somewhat more or less, which is bounded on the east by the San Marcos road; on the south by an arroyo called Cuesta del Oregano; on the west by land of Juan Garcia de las Rivas, and on the north by lands of Captain Sebastian de Vargas.

Therefore, I ask and pray, in all humility that Your Excellency be pleased to make me in the name of His Majesty, a grant for the said piece of land, for myself and my children, heirs and successors, and that the act of royal possession be executed to me whereby I will receive benefit and favor as well as justice which I seek. And I swear in due form that this my petition is not made, in malice and as it may be necessary, &c.

JOSEPH DE LEYBA.

Grant.

This petition was presented by the petitioner to his excellency, the governor and captain general of the province, and being examined by His Excellency, he treated the same as before him, and in consideration of the prayer of the party His Excellency directed the chief alcalde of the city of Santa Fé to proceed to the spot referred to by the party, and inspect the land he applies for with citation to the adjoining settlers; and there being no prejudice resulting to any third party having a bette- right, I do make, and in the name of His Majesty (God preserve him) the grant for the land the petitioner prays for, with the condition that the settle the same within the term prescribed by the royal ordinances, into the royal and personal possession of which land said chief alcalde will place the party, and will place the act of possession at the close hereof.

Thus His Excellency aforesaid decreed, commanded and signed before me the present secretary of state and war. To which I certify.

BUSTAMANTE.

By command of his excellency, the gov. and capt. gen'l.
ANTONIO DE GIVUSAYA,
Sec. of State and War.

Act of Possession.

At the city of Santa Fé, on the 25th day of the month of May, in the year one thousand seven hundred and twenty-eight, before me,

Capt. Diego Arias de Quiros, chief alcalde and war capt. of the said city, acting as special commissioner with the undersigned my attending witnesses; in execution of the above decree made by His Excellency Juan Domingo de Bustamante, gov. and capt. gen'l, I proceeded to give the possession prayed for by Jose de Leyba in his petition. I arrived at the place applied for by the petitioner, taking with me Juan Manuel Chirinos and Capt. Sebastian de Vargas and having inspected the land and woods prayed for by the said petitioner, I took him by the hand in the presence of the parties mentioned, performing the customary ceremonies, and he plucking up grass, casting stones, and shouting aloud in sign of ownership, I placed him in royal possession, in the name of His Majesty (God preserve him); so that in his name and royal word, he, the party aforesaid and his children and heirs may enjoy the same. In testimony whereof I sign this as special justice with the undersigned my attending witnesses for lack of a public or royal notary, there being none in this province, and on this common paper as there is no stamped paper in this section. I certify.

DIEGO ARIAS DE QUIROS,
Special Justice.

JUAN MANUEL CHIRINOS.
JUAN JOSEPH LOBATO.

163 PLAINTIFF'S EX. "B."

Archive No. 732 *of the Surveyor General's Office of New Mexico.*

Venta Rl de la Zienega a favor de Migl Garzia de la riba. 1701.

En la Villa de Santa fee en doze dias del mes de Agosto de el año de Mill Setezientos y uno ante mi Joseph Rodriguez alcalde ordinario deel Segundo Votto deestta dha Villa por no haver escrivano publico ni Rl enestte Rno nienmas de Duzi entos y settentta leguas en conttorno auttuando como Juez Rezeptor con dos testigos de assisttencia parezio Joseph Castellanos vecino deestta dha villa y dixo que dava y dio en Venta Rl el sitio deel pueblo viejo dela Zienega quela compro al Alferez Rl Domingo dela Barreda y al dho se lo havia vendido elmismo a favor de quien se otorga estta escrittura que es Miguel Garzia dela riba con la Mrzd que le hizo el genl Don Diego de Vargas a bernabe Jorje en ne de su Mgd de quien lo hubo por Venta Rl. el dho Miguel Garzia por el precio de Duzientos ps. que el corriente de estta tierra pagara para el mes de henero deel año que viene de mill settezientos y dos sobre que renuncia las leyes dela non numerata pecunia y las de Duobus res de Vendi y la autentica pre fide juorubus para que como suyo proprio el dho sittio dela Cienega lo pueda trocar cambiar y enajenar y usar deel a su voluntad dando poder a las Justtizias de su Mg para que con todo rigor de dho le compelan y apremien a cumplir lo conttenido en estta escrittura y que si en algun ttpo le prisiere pleito o demanda el dho Joseph Castellanos no sea oido en juizio no fuera deel y al saneameto obligo su persona y vienes muebles y raizes havidos y por

haver asi lo ottorgo y firmo juntamto. con migo y los testigos de mi asisttencia que fueron Joseph Antonio Romero y Domingo de la Barreda y de pedimto. de la parte entreque estte original quedando testimo. en mi poder y va en papel blanco ordinario por que el sellado no corre en estas ptes.

JOSEPH CASTELLANOS.

Testigo X de assa:
DOMINGO DE LA BARREDA.

Testigo de assa:
JOSEPH ANTONIO ROMERO.

Antte mi como Juez Rezeptor
JOSEPH RODRIGUEZ.

Concuerda estte traslado con su original de donde yo Joseph Rodriguez alcalde ordino. deel segdo. votto deestta dha Villa lo hize sacar a la lettra y estta ciertto y verdadero en una hoja de papel blanco ordino. porque el sellado no corre en esttas parttes y para que constte lo firme en estta Villa de Santafee en doze de Agto de mil settezientos y un años.

En testimonio de berdad, ago mi firma y Rubrica acostumbrada.

JOSEPH RODRIGUEZ.

(Endorsed:) Venta Rl de La Zienega a favor de Miguel Garsia de la ribas. Del Año de 1701.

164 *Translation of Archive No.* 732, *Surveyor General's Office.*

Royal sale of La Cienega in favor of Miguel 7 Garcia de la Riva 1701.

A- the villa of Santa Fé on the twelfth day of the month of August of the year one thousand seven hundred and one, before me Joseph Rodriguez alcalde ordinario of the second vote of this said villa, there being no public or royal notary (esvrivano) in this kingdom nor within a radius of more than two hundred and seventy leagues, acting as juez receptor with two attending witnesses, appeared Joseph Castellanos, resident of this said city, and said that he was giving and gave in royal sale the sitio of the old pueblo of the Zienega which he bought from the royal ensign Domingo de la Barreda, to whom it had been sold by the same person in whose favor this deed is executed who is Miguel Garzia de la Riba, with the grant which the general Don Diego de Vargas made to Bernabe Jorje in name of His Majesty, of whom he had it by royal sale, the said Miguel Garzia, for the price of two hundred dollars of the money of the country which is to be paid by the month of January of the coming year one thousand seven hundred and two and renounces the laws of non numerata pecunia and those of the Duobus res de Vendi, and the autentica pre fide juorubus, so that as his own property, the said Sitio de la Cienega, he can exchange and transfer it or use the same at his pleasure, and empowering the courts of His Majesty with all

rigor of law to compel him to comply with the provisions contained in this document, and if the said Jose Castellanos should at any time bring suit, he shall not be heard in court or out of it, and as a guaranty he pledges his person and real and personal property. To have and to hold he so executed and signed the same together with myself and my assisting witnesses who were Joseph Antonio Romero and Domingo de la Barreda, and at the request of the parties I delivered the original of this, and left a copy thereof in my possession written on ordinary blank paper, there being no sealed paper
165 in these parts.

JOSE CASTELLANOS.

Assisting witness:
DOMINGO DE LA BARREDA.

Assisting witness:
JOSEPH ANTONIO ROMERO.

Before me as special judge,
JOSEPH RODRIGUEZ.

This copy agrees with its original which I Joseph Rodriguez alcalde ordinario of the second vote of this city, have copied to the letter, and it is true and correct in one leaf of ordinary blank paper, there being no sealed paper in these parts, and that it may so appear I sign it in this city of Santa Fé on the twelfth day of August, one thousand seven hundred and one.

In testimony whereof I have affixed my customary signature.

JOSEPH RODRIGUEZ.

(Indorsed:) Royal sale of La Cienega in favor of Miguel Garcia de las Rivas in the year 1701.

166 PLAINTIFF'S EXHIBIT "C."

Extract from Page 8 of Book of Cabildo on File in the Office of the Surveyor General of New Mexico.

En 26 de Nobe de 1713 años presento el Capitan Jun Garcia de las Rivas una merced de tres fanegas de sembradura de mayz de la otra vanda del rio de esta villa qe en treinta y una dias del mes de heno. de 1702 años le hizo a el Capitan Migl Garcia su pe el Castellano Don Pedro Cubero, refsendada, de Don Pedro de Morales, cuyos linderos constan en dha merced, y la posesion que en tres de febo de dho año le dio el Alguazil mayor, Anto de Isa si, la cual le devolbio original.

167 *Translation of Extract from Page 8 of Book of Cabildo.*

On the 26th day of November, 1713, Captain Juan Garcia de las Rivas presented a grant for three fanegas of corn-planting land on the other side of the river of this town which on the 30th day of January, 1702, Pedro Cubero el Castellano made to his father Miguel

Garcia de las Rivas countersigned by Don Pedro de Morales whose boundaries are recited in the grant, and the possession of which was given to him on the third day of February by the Alguazil mayor, Anto de Isa, si, which original was returned.

168 PLAINTIFF'S EXHIBIT D.

This deed, made this sixteenth day of August, in the year of our Lord, one thousand eight hundred and ninety-five, between Salvador Leiba son of Juan Angel Leiba and Ines Apodaca of the county of Bernalillo and Territory of New Mexico, of the first part, and Mariano F. Sena of the county of Santa Fé and Territory of New Mexico of the second part:

Witnesseth, that the said party of the first part, for and in consideration of the sum of one dollar to the said party of the first part in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, has granted, bargained, sold, conveyed and confirmed, and by these presents does grant, bargain, sell, convey and confirm unto the said party of the second part, his heirs and assigns forever, all the following-described lot or parcel of land, situate, lying and being in the county of Santa Fé and Territory of New Mexico, to wit:—All his right title and interest, in and to that certain grant of land, made to Jose Leiba on the 25th day of May, A. D. 1728, by the then governor of the province of New Mexico, bounded as follows:—On the east by the San Marcos road; on the south by an arroyo called Cuesta del Oregano; on the west by the lands of Juan Garcia de las Rivas; and on the north by lands of Sebastian de Vargas.

Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion or reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, claim and demand whatsoever of the said party of the first part, either in law or equity, of, in and to the above-bargained premises, with the hereditaments and appurtenances.

To have and to hold the said premises above bargained and described, with the appurtenances unto the said party of the second part his heirs and assigns forever. And the said Salvador Leiba party of the first part, for his heirs, executors and administrators, does covenant, grant, bargain and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents, he is well seized of the premises above conveyed, as of good, sure, perfect, absolute and indefeasible estate of inheritance in law, in fee-simple, and has good right, full power, and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, assessments and incumbrances of whatever kind or nature soever; and the above-bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming, or to

claim the whole or any part thereof, the said party of the first part shall and will warrant and forever defend.

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

his
SALVADOR x LEYBA. [SEAL.]
mark.

Signed, sealed and delivered in the presence of
MANUEL BACA Y CAMPOS.

TERRITORY OF NEW MEXICO, } ss:
County of Santa Fé, }

On this 16" day of August, 1895, before me, personally appeared Salvador Leiba, son of Juan Angel Leiba and Ines Apodaca to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

JOSE D. SENA,
[SEAL.] *Notary Public.*

TERRITORY OF NEW MEXICO, } ss:
County of Santa Fé, }

In the recorder's office.

I, A. P. Hill, probate clerk and *ex officio* recorder of said county, do hereby certify that the within instrument of writing was, on the 18th day of September, A. D. 1895, at 10 o'clock and 30 minutes a. m., duly filed for record in this office, and is recorded in the records of this office, in Book "C" 1 at page 114, the same day.

In witness whereof, I have hereunto set my hand and affixed my official seal at Santa Fé, N. M., this 18th day of September, A. D. 1895.

A. P. HILL,
Probate Clerk and ex Officio Recorder,
[SEAL.] By JESUS MA. ORTIZ Y BACA, *Deputy.*

169 PLAINTIFF'S EXHIBIT E.

This deed, made this day of September 11 in the year of our Lord one thousand eight hundred and ninety-five between Maria Antonia Leiba de Ramirez of the county of Bernalillo and Territory of New Mexico, of the first part and Mariano F. Sena of the county of Santa Fé and Territory of New Mexico of the second part:

Witnesseth, that the said party of the first part for and in consideration of the sum of one ($1.00) dollar to the said party of the first part in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, has granted,

bargained, sold, conveyed and confirmed, and by these presents does grant, bargain, sell, convey and confirm unto the said party of the second part, his heirs and assigns forever, all the following-described lot or parcel of land, situate, lying and being in the county of Santa Fé and Territory of New Mexico, to wit:—

All her right, title and interest in and to that certain grant of land made to Jose Leiba on the 25th day of May, A. D. 1728, by the governor of the province of New Mexico, bounded as follows: On the east by the San Marcos road; on the south by an arroyo called Cuesta del Oregano; on the west by lands of Juan Garcia de las Rivas; and on the north by lands of Sebastian de Vargas.

Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, claim and demand whatsoever, of the said party of the first part, either in law or equity, of, in and to the above-bargained premises, with the hereditaments and appurtenances.

To have and to hold the said premises above bargained and described, with the appurtenances, unto the said party of the second part, his heirs and assigns forever. And the said Maria Antonia Leiba de Ramirez party of the first part, for her heirs, executors and administrators, does covenant, grant, bargain and agree to and with the said party of the second part, and his heirs and assigns, that at the time of the ensealing and delivery of these presents she is well seized of the premises above conveyed, as of good, sure, perfect, absolute and indefeasible estate of inheritance, in law, in fee-simple, and has good right, full power, and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments and incumbrances of whatever kind or nature soever; and the above-bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming, or to claim the whole or any part thereof, the said party of the first part shall and will warrant and forever defend.

In witness whereof, the said party of the first part, has hereunto set her hand and seal the day and year first above written.

MARIA ANTONIA x (su marca) LEYBA DE RAMIREZ.

Signed, sealed and delivered in the presence of
JOSE DOMINGUEZ.
TOMAS RUIZ.

TERRITORY OF NEW MEXICO, }
County of Bernalillo, } ss:

On this day of September 11, 1895, before me personally appeared Maria Antonia Leiba de Ramirez á mi conocida, to me known to be

the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

[SEAL.] FRANCISCO SAMORA,
Juez de Paz, Precinto de la Tijera No. 22.

TERRITORY OF NEW MEXICO, } ss:
County of Santa Fé, }

I hereby certify that this instrument was filed for record on the 4th day of Nov. A. D. 1895, at 4.15 o'clock p. m., and was duly recorded in Book C–1, of the record of deeds page 170, on this 9th day of February A. D. 1897.

Witness my hand and seal of office.

ATANASIO ROMERO,
P. C. and Recorder, Santa Fé Co., N. M.

170 PLAINTIFF'S EXHIBIT F.

In the Court of Private Land Claims, Sitting at Santa Fé, New Mexico.

Final Decree in Case of—

BEATRIZ PEREA DE ARMIJO
vs.
UNITED STATES. } No. 79.

This cause having heretofore come on to be heard upon the pleadings and exhibits on file and upon the proofs taken, full legal proof having been taken and counsel having been heard for said parties and the petition in this cause having been sustained by satisfactory proofs, after due deliberation, the court, being now sufficiently advised in the premises, makes the following findings of facts—

1. That on the 21st day of January, 1788, Cleto de Miera and Pedro Baptista Pino presented their petition to Don Fernando Concha, then governor of the province of New Mexico, asking for the grant of a piece of land known as the Sitio de los Cerrillos, setting forth as the boundaries, on the east the Ojo de los Cerrillos, on the west the boundaries of the Sitio de Juana Lopez, on the north the boundaries of the Sitio de la Cienega and on the south the wooded hills; and that on the 24th of January, 1788, the said governor made an order granting the lands asked for, but stating that this was not to be in perpetuity, but only for the present and until the time when circumstances might compel him or his successors to determine otherwise; and that the same day the said governor made another order directing the alcalde mayor of Santa Fé to deliver possession and to report the same in continuation of the decree as a juridical document, and that on the 11th day of February, 1788, the said alcalde mayor in obedience to the said order of the said governor delivered juridical possession of said land to the said grantees and made a report of his proceedings, in which report he declares the boundaries

to be: on the east the lands of the heirs of Alfonso Rael; on the west the lands of the grantee Pino; on the north the boundary line of the Cienega, and on the south the high hills, said land being nine hundred varas in width from east to west.

2. That the said grantees went into possession of said land on said 11th day of February, 1788, and by themselves, their heirs and legal representatives have retained and held continuous and undisputed possession of the same until the present time.

3. That the petitioner is the legal successor in interest in part to the rights of the said original grantees.

The court finds as matter of law that the petitioner is entitled to a confirmation of the claim set up in their petition, to the heirs and legal representatives of the said Cleto de Miera and Pedro Baptista Pino.

The court specifies that the said land is located in the county of Santa Fé and Territory of New Mexico, and is bounded as hereinbefore set forth.

It is therefore ordered, adjudged, and decreed by the court that the claim of the petitioner for the land hereinbefore described and set forth be and the same hereby is confirmed to the heirs and legal representatives of the said Cleto de Miera and Pedro Baptista Pino; provided, however, as to any part thereof which may have been sold or granted by the United States to any other person, that such title from the United States to such other person shall remain valid, notwithstanding this decree, and leave is hereby given to the said petitioner hereafter to present her claim to this court and make proof thereof as to the value of any such lands so sold or granted by the United States; and provided, further, that this confirmation shall not confer any right or title to any gold, silver or quicksilver mines or minerals of the same.

JOSEPH R. REED,
Chief Justice.

171 & 172 PLAINTIFF'S EXHIBIT G.

In the Court of Private Land Claims, Sitting at Santa Fé, New Mexico.

Final Decree in Case of

BEATRIZ PEREA DE ARMIJO
vs.
UNITED STATES. } No. 82.

This cause having heretofore come on to be heard upon the pleadings and exhibits on file and upon the proofs taken, full legal proof having been taken and counsel having been heard for said parties and the petition in this cause having been sustained by satisfactory proofs, after due deliberation, the court being now sufficiently advised in the premises, makes the following findings of fact:

1. That at some time prior to December 30th, 1762, a grant of

the tract of land described in the said petition and hereinafter described and set forth had been made by the proper officers of the Spanish government and the said government had parted with the title to said land and the said land had become private property:

2. That at some time prior to January 21, 1788, the title to said land had vested in one Pedro Bautista Pino, and that the said Pino, his heirs and legal representatives have been in the continuous, undisputed possession of said land from said last-mentioned date down to the present time:

3. That the petitioner is the legal successor in interest in part to the rights of the said Pedro Bautista Pino.

The court finds as matter of law that the petitioner is entitled to a confirmation of her claim as prayed in her petition, to the heirs and legal representatives of the said Pedro Bautista Pino.

The court hereby specifies that the land is located in the county of Santa Fé and Territory of New Mexico, and is commonly known as the sitio of Juana Lopez, and is bounded on the north by the lands of the sitio of the Cienega, on the east by the Sitio or Rancho de Los Cerrillos, on the south the skirt of the woods (la falda del monte) and on the west by a small willow and the slope of a little tableland, generally called the Mesita de Juana Lopez.

It is therefore ordered, adjudged and decreed by the court that the claim of the petitioner for the land hereinbefore described and set forth be and the same hereby is confirmed to the heirs and legal representatives of the said Pedro Bautista Pino; provided however, as to any part thereof which may have been sold or granted by the United States to any other person, that such title from the United States to such other person shall remain valid, notwithstanding this decree, and leave is hereby given to the said petitioner hereafter to present her claim to this court and make proof thereof as to the value of any such lands so sold or granted by the United States; and provided, further, that this confirmation shall not confer any right or title to any gold, silver or quicksilver mines or minerals of the same.

JOSEPH R. REED,
Chief Justice.

(Indorsed:) Filed in the office of the clerk, Court of Private Land Claims. Sep. 29, 1894. Jas. H. Reeder, clerk. By I. L. Chaves, deputy.

* * * * * * *

173 Translation.

To his excellency the governor and captain general:

I, Antonio Urban Montaño, a resident of this village of Santa Fé, appear before Your Excellency in due form of law and say, sir, that I have registered a tract of land situate between the point of the Cerrillos and the pueblo of Galisteo, which is vacant and unsettled, which was anciently the pueblo of San Marcos, which I have registered for the reason that I have a large family, consisting of my wife and children, and also some herds of stock; and not possessing

a tract of land on which to pasture said stock without committing damage, and not having other means for supporting myself together with my said family, therefore I ask and request Your Excellency to be pleased to concede to me in grant the said tract of land in the name of the King our lord (whom may God preserve) the boundaries thereof being on the east, the high road leading to the said pueblo of Galisteo, and on the west by the side of the hills which are between the said point and the arroyo of Lo de Basquez, and on the north a small rocky mountain on the pra-rie, and on the south the ridge that divides said place from said arroyo of Lo de Basquez, there always remaining free the pastures and waters, as is customary. I only ask for said place in order that I may in my own right build a house, and as I have already stated, to enable me to graze my herds of sheep and goats, and some cows that God has been pleased to give me. Your Excellency, in doing what I have asked, I would receive favor with justice, which I ask, and without any dissimination, and I swear in due form to this document.

(All erasures of no validity)

FELIPE TAFOYA, *Solicitor.*

SANTA FÉ, *June* 15, 1754.

Having taken this document as presented, and in view of the reasons therein set forth, I, Tomas Velez Cachupin, governor of this kingdom of New Mexico, said that in the name of His Majesty (whom may God preserve) the tract of land asked for, being public domain and without prejudice to any third party having a better right, do make to him, said grant, but not with the limits he asks for and designates, but those designated by law of thirty-three cordels of fifty varas in each direction, measuring from the centre where he may build his house and corrals, with the understanding that he shall not damage it with his herd, the commons and pastures of the horses of this royal garrison, nor the pasturage of the herds kept for the supply and support of the soldiers of the royal garrison, which are pastured and kept at those places, should he do so, this grant shall be of no validity, and cannot be of any force or effect, and he may be ejected therefrom. And I entrust the proceedings of possession and measurement, as provided, to the lieutenant, chief alcalde of this village Bartolome Fernandez which proceedings he will place in continuance of this decree of grant and when he shall have concluded the same he will return them to this government in order that the party may be supplied with the certificate of all, and which will serve him as a title in due form. Thus I provided and signed, acting with the attending witnesses; to which I certify.

TOMAS VELEZ CACHUPIN.

TOMAS DE ALVEAR Y COLLADO.
MIGUEL DE ALIRE.

On the 26th day of the month of July, in the year one thousand seven hundred and fifty-four, I, Lieutenant Bartolome Fernandez, in compliance with the order of his excellency the governor Tomas

Velez Cachupin, proceeded to the place of San Marcos, together with two witnesses who were Miguel Thenorio de Alba and Manuel Thenorio de Alba, as also the applicant Antonio Urbano Montaño, to place him in possession of said tract of land in conformity with the grant made by His Majesty (whom may God preserve) the King our lord, Fernando Sixth, to the said Antonio Urbano Montaño, whom I took by the hand and conducted him over said tract of land. He pulled up grass, threw stones, and shouted "Long live the King our lord" he taking possession of said lands without contradiction of any third party having a better right thereto, peaceably and quietly, as in such cases are required, designating to him the boundaries which are, on the east, two cedar trees; on the west a small mountain called Chalchiguite and on the south a large cottonwood tree, near the road, and on the north some red rocks in the arroyo. And in perpetual testimony thereof, I sign this, acting by appointment, with my attending witnesses, and on the present paper for the reason that there is no sealed paper in these parts; to which I certify.

BARTOLOME FRY,
Judge by Appointment.

Witness:
MIGUEL THENORIO DE ALBA.

Witness:
MANUEL THENORIO DE ALBA.

* * * * * * *

174 (Translation.)

Fourth seal, two reales, for the years one thousand eight hundred and forty-two and one thousand eight hundred and forty-three, and validated for the years one thousand eight hundred and forty-four and forty-five.

Mariano Martinez, governor; Jose Antonio Chaves, administrator.

In this city of Santa Fé, November 22, 1844, before me citizen Jose Francisco Sena, first constitutional alcalde for the administration of the law of said city, and its jurisdiction, personally appeared citizens Domingo Fernandez and Demetrio de la Ora of this vicinity, whom I certify I know, and the former declared that he had granted and in effect grants and conveys to De la Ora aforesaid two hundred varas of land in the paraje commonly called the Arroyo Hondo for the price and sum of fifty dollars in money, and its boundaries are on the east and west, the lands of the grantor; on the south the road that leaves the Cerrillos and goes to the pueblo of Pecos, and on the north the Arroyo de los Chamizos, which sum said Fernandez acknowledges to have received of De la Ora to his entire satisfaction; and that he grants it free from any tax, mortgage or other lien, and if it should be worth more he donates to him the surplus value as a pure gift, which the law terms *inter vivos;* granting and transferring all of the grantor's right, title and interest

that he may enjoy it and that neither the grantor nor his heirs or successors shall bring any suit or make any demand therefor, leaving the forest free to him. And in case any one should bring suit or demand let him not be heard either in or out of court;
175 & 176 and grantor will defend him in the quiet, peaceable possession and gives authority to the national justices, especially to the one of this city, that with all rigor of the law he may compel grantor to fulfil this deed; so he binds himself, his person and his goods renouncing all laws in his favor, and that this may have all the required validity, he requested me as said alcalde to interpose my authority and judicial decree, and I said that I would, and I did interpose it, as fully as I am empowered by law and I signed it with my assisting witnesses with whom I act in the absence of a notary public, there being none of any kind in this department. To all of which I certify.

DOMINGO FERNANDEZ.

JOSE FRANCISCO SENA.

De asistencia:
FRANCISCO DE LA PEÑA.

Testigo de asistencia:
NEPOMUCENO APODACA.

Fees $3.

* * * * * * *

177 (Translation.)

In this city of Santa Fé on the 23rd day of November, 1846, before me citizen Mateo Sandoval second constitutional alcalde and judge in the matter of the inventory made by my predecessor D. Tomas Rivera of the property belonging to the deceased Don Demetrio de la Ora which have been sold at public auction to pay his debts and judgments, there being no higher bidder, there was sold to Don Eugenio Leitendorfer resident of this Territory whom I certify I know, a ranch of two hundred varas of land at Arroyo Hondo with a house with a room of turf, two jacales, a thousand grapevines, one corral, one scaffolding, and one corn-crib, for the price and sum of one hundred and twenty-five dollars which he delivered to this court, for which, if it be or can be worth more, with the surplus and greater value, there is made to the purchaser gift and donation simple, entire, perfect and irrevocable of said land, with the following boundaries: On the east it is bounded by lands of Don Domingo Fernandez, and on the west by said Fernandez, on the south by the road that goes from Cerrillos to the pueblo of Pecos, on the north by the height of the Arroyo Chamisos, and it is given to him free from tax, mortgage or other lien in order that he may enjoy it, sell it or dispose of it as he may wish and that the wife of the said Demetrio nor his son will bring no suit against him, said mother having agreed to the sale of said land to pay the debts to be satisfied out of the estate, and that she will bring no suit or demand, either now or hereafter; should she do so or they do so, they shall

not be heard in or out of court and the grantor will defend him in the quiet and peaceable possession and gives authority to the national justices, especially to the one of this city that with all rigor of the law he may compel grantor to fulfil this deed; so he binds himself, person and goods, renouncing all laws in his favor, and that this may have all the required validity, he requested me to interpose my authority and judicial decree as judge and I the said alcalde said that I would and I did interpose it as fully as I am empowered by law, and I know the vendor and he did not sign because he did not know how, and with my assisting witnesses signed it in the absence of a public notary there being none of any kind in this Territory; to which I certify.

MATEO SANDOVAL.

Witnesses:
ANTONIO VALDEZ,
MANUEL SISNEROS.

Fees $3.

In case the land named in the above document was bought in company with Don Guillermo Smith and who declares an equal right with Señor Don Eugenio Leitendorfer in affirmation of the same at the same day mentioned, I sign in the presence of the witnesses.

MATEO SANDOVAL.

Witnesses:
ANTONIO VALDEZ.
DOMINGO FERNANDEZ.

* * * * * * *

178 PLAINTIFF'S EXHIBIT K.

Copy of partition made by Domingo Fernandez February 5, 1857, of the western part of the Sebastian de Vargas grant, which belonged to the heirs of his mother.

* * * * * * *

(Translation.)

Being at the Alamo where the road makes a cross and the Arroyo de los Chamisos empties, boundary according to the mesa in which was the cross of the Alamo, boundary of Don Jose Reaño and said Arroyo de los Chamisos of the grant of Sebastian de Vargas, and now in possession of my sisters and myself who are Maria Rosa, Maria Francisca, Maria Josefa, Maria de Jesus and I, Domingo Fernandez, by the end and death of my mother Doña Maria Francisca Sena who had it by inheritance from her deceased father Don Bernardo Sena to whom it came by the end and death of Captain Don Tomas de Sena through purchase which he made from Captain Sebastian de Vargas, as all evidenced by the deed which this one (De Vargas) executed of the sale before the alcalde Nicolas Ortiz which remains in my possession. Its boundaries are on the east the

Camino del Medio; on the west the line of Don Jose Reaño, and the edge of the woods; on the north the height (alto) of the Arroyo de los Chamisos, and on the south the road which leaves Cerrillos and goes to the pueblo of Pecos, and as I am the only one of the children who is living, in order that my nephews — that which belongs to them in said sitio from the share of their mothers, I proceeded to measure it as I had verified it, because it had not been done by the executors of my mother, with the cordel of Castillian varas; there resulted to each one of my sisters and to me four thousand varas which I divided for the share of my sister Maria Rosa among her children who are Lorenzo Baca, Maria de los Reyes Baca, Estevan Baca and Maria Antonia Baca and to each one there belonged a thousand varas; to Gregoria Tafoya for the share of her mother four thousand to her and to Manuel and Juan Antonio her brothers; to Maria de Jesus four thousand which remained by her desire in my possession as she always lived with me until her death, and for the share of Maria Josefa four thousand varas which will be divided among her grandchildren which are received (by them), and four thousand which belonged to me; all of which remains set down in this document for a record in the future, and it is done in this county of Santa Fé where said land is situated this fifth day of February, 1857, and I sign it for its validity.

DOMINGO FERNANDEZ.

179 PLAINTIFF'S EX. "L."

In the Court of Private Land Claims.

LOUISE J. PURDY ET AL.
vs.
THE UNITED STATES.

Opinion.

This is a claim for the confirmation of a large tract of land lying near the city of Santa Fé under a grant alleged to have been made by the Spanish authorities to Sebastian de Vargas. Title to the land is claimed by petitioners and their associates under two separate lines of ownership. A tract consisting of about one-third of the whole, and lying east of what is known as the Galisteo road, and which will be designated as the east tract, is derived through one Juan de Urioste. The remainder of the tract, lying west of the Galisteo road and which will be designated as the west tract is derived through one Tomas de Sena.

It is convenient to consider the case with reference to each of these tracts separately.

First. As to the east tract.

The original grant papers are not found, and there is no record found among the archives of such original papers, and the petitioners rely upon circumstantial evidence, and the recitals and statements in other grant papers found among the archives, to establish the fact that the grant to De Vargas was made as claimed. The north

boundary of the land claimed is the Arroyo Chamizo, the south boundary the road from Pecos to Cerrillos. The east boundary the road from Santa Fé to Pecos. The conveyance from De Vargas to Urioste is not produced, and the petitioners also rely upon the evidence of circumstances and the recitals in other grant documents to establish the making of such conveyance.

It appears that as early as 1710, De Vargas was exercising dominion over a portion of this land. That he had his house north of the Arroyo Chamizo and had acequias running from the Rio Santa Fé to the Arroyo Chamizo which were recognized as his, and was openly making conveyances of land between the Chamizo and the city of Santa Fé near which his house and acequias were located. On August 17, 1728, a revalidation grant was made to Juan de Leon Brito. In his petition, Brito gave the acequias of De Vargas as his north and south boundaries, and his west boundary the Pecos road. On this petition, the governor made an order citing De Vargas and one Lopez "to assert what rights they claimed under the title papers they held." This seems to amount to reasonable proof that it was officially known to the governor at that time that De Vargas had title papers to land adjoining that prayed for. This could only be for land granted to him by the government. It is a fair conclusion from this, that De Vargas had a grant of land; that the documents constituting his title were on file at that time, and that the north boundary of his grant was as far north as his house and acequias. This conclusion is also corroborated by the recitals in the grant papers in the grant made to De Armenta, April 19, 1733.

On October 7, 1785, a grant was made to Lorenzo Marquez of a tract lying immediately south of the road from Pecos to Cerrillos. In the petition for this grant it is recited that the land petitioned for "is a surplus of the land of Captain Sebastian de Vargas." The boundaries given as asked for were "on the south and west said land adjoins the little valley called La Cañada de la Tierra. On the north it adjoins said Vargas land. On the east the Pecos road going to the Ranchos de la Cienega." This petition was acted upon, received and placed on file as part of the public records and the grant was made in compliance with it. It is fair to infer from this that it was a recognized fact by the government that De Vargas had a grant of land; that the character and extent of it were shown by the public records, and that it extended to the south beyond the road from Pecos to Cerrillos, and to the east to the Pecos road, and to the west as far as the Galisteo road.

The case of The United States *vs.* Sutler, 21 Howard, 170 was very much like the one under consideration in that the claimant relied upon circumstantial evidence and the recitals in other grant documents to prove the fact of making the grant. The Supreme Court recognized such evidence as proper and upheld a confirmation based upon it, the original documents nor any records of them not being produced. In that case one of the items of evidence was a petition which had been presented and acted on asking for the *sobrante* or surplus of the land covered by the original grant confirmation of which was sought, and the court said "The petition for the surplus,

or *sobrante*, implies there was an existing and operative grant which the authorities recognized and respected."

180 It results from this that there is evidence which cannot be ignored, and of the *bona fides* of which there can be no suspicion that De Vargas had a grant of land which we have designated as the east tract. It appears also that no other grant was ever made of any part of it or of land conflicting with it. From time immemorial this land has been known in the community as the "De Vargas grant." The majority of the court regard this as sufficient evidence to warrant a finding that a grant was made to De Vargas, and that it covered at least all the land designated as the east tract.

The question remains whether the claimants have shown title in themselves derived from this grant to De Vargas, so as to authorize them to demand a confirmation. They derive their title from Jose Maria Montoya who received a conveyance of the east tract from Juan de Urioste. No conveyance is produced from De Vargas to Urioste or to any other person. It appears that the grantees of Montoya and those holding under them have at all times exercised dominion over the property. By the deed of Urioste to Montoya which was made September 17, 1782, he makes a conveyance of the property by metes and bounds describing it as "a ranch which he has in the Arroyo Hondo with a house and its common lands &c., the boundaries are on the north side the Pecos road, on the south the road from Pecos to Cerrillos, on the east some black hills, on the west the middle road from Galisteo. It appears that Montoya took possession under this conveyance. October 17, 1785, the grant to Marques was made. The grant documents in that grant, which are a part of the public records, show that Marques asked in his petition for the surplus to the land of De Vargas and specified the De Vargas land as the north boundary of the land he petitioned for. The alcalde in obedience to the direction of the governor endorsed on the petition, proceeded to give possession to Marquez agreeably to the prayer of his petition. In doing so, he summoned Montoya as the owner of what in the petition was described as the land of De Vargas as a party in interest in adjudicating the boundary between the "said De Vargas land," and the land granted to Marquez. In determining the weight to be given this circumstance as bearing upon the question of a conveyance from De Vargas to Urioste, we cannot overlook the well-known customs of this people at that time, their scarce population, their provincial position, their manner of holding, cultivating and transferring property.

The land-holders almost universally lived in the towns. Residences were seldom or never changed. The alcalde was the principal judicial officer and general factotum of the community, and was well acquainted with the people and their affairs. He performed an official function in reference to all grants made by the government in his jurisdiction. He had official connection with all transfers of land made between individuals in his jurisdiction. In performing his official duties in giving possession of granted lands he was bound to ascertain and summon all owners of adjoin-

ing lands. In this community at that time these were not matters hid under a bushel, but all owners of land and how they came to be owners may be supposed to have been well known to the people generally, and especially to the public officers whose duty it was to deal with those matters.

The fact that such a petition was presented for the sobrante to the De Vargas grant, and that Montoya was summoned as the owner of the De Vargas land, shows that it was recognized as a fact by the public authorities charged with ascertaining and acting upon such matters, that Montoya had rightfully succeeded to the title of De Vargas in the land. These authorities had the means of officially knowing the facts. They were acting officially upon the then existing facts. In so acting they recognized Montoya as the proper person to settle that boundary, which in effect was a recognition of him as the successor to De Vargas. It is evidence tending to prove that De Vargas had conveyed to Urioste who conveyed to Montoya, and the majority of the court regard it as sufficient to warrant a finding to that effect.

We refer to the cases of Peralta *vs.* The U. S., 19 How., 343; U. S. *vs.* Sutler, 21 How., 170; Nieto *vs.* Carpenter, 7 Cal., 527. Cornwall *vs.* Culver, 16 Cal., 424, as sustaining the proposition that the recitals contained in other grant documents found in the public archives may be received as evidence of the facts recited and regarded as admissions by the public authorities of the existence of such facts, and as sufficient to warrant a finding of the existence of such facts.

Second. As to the west tract.

There are no grant documents produced containing any recitals relative to a De Vargas grant other than those above referred to, nor any record evidence that the De Vargas grant extended westward beyond the Galisteo road, except two deeds which will be hereafter considered. On May 29, 1769, a grant was made to
181 Antonio Armijo of a tract adjoining the one claimed. The recitals in the Armijo grant show that at that time Tomas de Sena owned a tract of land lying west of the Galisteo road and extending as far north as the Arroyo Chamisos, but they do not throw any light upon the source of his title. In order to justify a confirmation under the petition in this case we must be able to find from the evidence that this west tract was included in the grant to De Vargas and was conveyed by him to De Sena. To establish these facts, the claimants rely upon a number of circumstances which it is proper to examine.

On March 10, 1853, Domingo Fernandez who was a descendant from Tomas de Sena, made a deed of a thousand varas of this land to Simon Delgado, in which deed, after stating the north boundary of the parcel conveyed as the Arroyo Chamisos, and the south boundary as the road from Pecos to Cerrillos, it is recited that these boundaries are "cited in the Sebastian de Vargas grant of whom my great-grandfather bought it."

On February 5th, 1857, Domingo Fernandez, acting as the administrator of the estate of his mother who was the grand-daughter of

Tomas de Sena, made a deed of partition of his mother's portion of this west tract dividing the same among his brothers and sisters. In this deed it is recited that the land "came from Bernardo de Sena to whom it came from Capt. E. Tomas de Sena by purchase which he made from Capt. Sebastian de Vargas, all of which appears by the deed of conveyance which he executed before the alcalde Ortiz, which document is in my possession, which shows boundaries on the east the middle road, on the west the lands of Jose Reaño, on the north the heights of the Arroyo de los Chamisos, on the south the road from Cerrillos to Pecos."

It is contended that these two deeds being more than thirty years old are within the category of "ancient deeds," and that their recitals are competent evidence, and are sufficient to establish the existence of the grant to De Vargas, and the fact of the conveyance from De Vargas to De Sena.

There is no rule of law conferring particular sanctity or probative force upon the recitals in a deed which happens to be thirty years old. Such recitals are simply statements of the party who made the deed. The deed is simply evidence that he made the statement. The statement is entitled to no more weight by reason of being written in a deed than it would have if the making it was satisfactorily proven by oral testimony. Recitals in deeds are binding on those who make them and on those who claim under them. But such recitals are not even evidence against those who claim adversely or by title paramount to the deed. The facts of this case illustrate the absurdity of any other rule. In 1853 and in 1857, Domingo Fernandez and his associates were claiming title to this land. At the same time and at all times since, the United States was claiming title to the land adversely to them. Fernandez and his associates had no evidence of title whatever. The United States had evidence of title in the treaty of Guadalupe Hidalgo. Fernandez makes out a deed to his associates in which he recites a title. This deed is preserved for thirty years. The idea that an open and continuous adversary can be overcome by evidence of title produced in this way is preposterous, and is not supported by a single adjudication.

It is a well-settled rule that before statements of this kind can be received for any purpose it must appear, either by proof or as a presumption from the circumstances, that the person whose statement is sought to be introduced had knowledge of the facts contained in the statement. In Hunnicutt *vs.* Peyton, 102 U. S. 333, the court lays down the rule that "declarations of particular facts, as distinguished from reputation, made by deceased persons are not admissible unless made by persons who it is shown had knowledge of that whereof they spoke. A declaration which is mere recital of something past is not an exception to the rule that excludes hearsay evidence."

The facts recited in these deeds were more than a century past by when the recitals were made. Fernandez could not possibly have any knowledge on the subject. If he had been produced as a witness at that time, his statements as made in the deeds would not

have been received by any court, for the reason that he was not competent to testify, having no knowledge of the facts. What has been said concerning the recitals in the deeds is also pertinent to the declarations of Vigil and Chacon, as testified to by Alarid, Griego and Rael, to the effect that they had seen the grant papers of the De Vargas grant in the governor's office. It is not shown that they had knowledge of the contents of the papers or their genuineness. Moreover, their declarations if admitted, do not show that the grant papers covered the west tract. The testimony of Jose Maria Padilla as to the statements of his father and grandfather is open to the same objection.

These statements and recitals all stand upon a different footing from recitals in other original grant documents found in the public archives which are to be regarded in the light of admissions by the Government of the facts recited in them.

182 All of the evidence introduced to show that the De Vargas grant covered the west tract, and to show a conveyance from De Vargas to De Sena is strictly hearsay and within none of the exceptions to the rule which excludes hearsay testimony, and is wholly insufficient to establish either that the tract was covered by the grant or was conveyed to De Sena by De Vargas.

It results that the claimants are entitled to a decree of confirmation of so much of the land claimed as lies east of the Galisteo road, and that their claim to so much of the land as lies west of that road is rejected.

Associate Justices Fuller and Stone concur in this conclusion in so far as it confirms the claim to the east tract, but do not concur in so far as it rejects the claim to the west tract, they being of opinion that the claim should be confirmed entire.

Chief Justice Reed and Associate Justice Murray concur in this conclusion in so far as it rejects the claim to the west tract, but do not concur in so far as it confirms the claim to the east tract, they being of opinion that the claim should be rejected entire.

H. C. SLUSS,
Associate Justice.

183 PLAINTIFF'S EXHIBIT "M."

Archive No. 180 *from the Office of the Surveyor General of the Territory of New Mexico.*

Sor. Governor y Cappn. Genl.

Gregorio Crespin, vesino de la Villa de Santafee, puesto A los pies de la grande sa de Vss: en toda forma, que aya lugar qual me conbenga; y digo que por quanto me beo cargado de obligasiones y no tener un pedaso de tierra para poder sembrar para mantener dhas mis obligasiones, hetenido notizia de un pedaso de tierras, el qual esta dela otra vanda de el Rio que vienen haser sobras del Capn Juan Garzia de la rribas Vecino que fue deesta dha Villa, y sus linderos son los siguientes, por el oriente, lindan con tierras de dho, Capn. Juan Garzia, por el poniente con tierras de Juan Phe. Rod-

rigues, por el norte de el Capn. Sebastian de Vargas y por el sur con el camino de el Alamo; las quales pido Alagrandesa de Vss. se meden por merzed en nombre de su Magd que Dios gue. y de conseder melas se me de la posesion Rl. que rrese una merzed y juro, en de vida forma, no ser de malisia este escripto: &c.

GREGORIO CRISPIN.

Auto.

En la Villa de Sta fe en ocho Dias del mes de Agto delaño de Mil settess. cuarenta y dos años Yo el Thete. Coronel Dn. Gaspr Domo. de Mendosa Goverr. y Cappn. Generl. deste Reyno del Nuebo Mexco. enbirtud delprete. escrito debia mandar y mande al Alcalde mr. deesta Villa Antonio de Ulibarri pasase del sitio de las tierras que pide el suppte. y rreconozi das lede en nombre del Rey ñro Señor Dios lege. la merzed que pide pa. si sus Hijos y susesores ama yor dro habserbando en su data las si sircunstansias y rrequisitos nesesarios segun estilo y en particular ba de sin perjuisio de tersero, asi loprobey mande y firme con los testtigs. de mi asistena. por la falta de escrivno. Real y Puco. queno leay y en el prete. papel por no correr el sellado en dho Reyno, de que doy fee.

DN. GASPAR DOMO. DE MENDOSA.

JOSEPH DE TERRUS.
JOSEPH TRUJILLO.

En la Villa de Santa fee, en ocho dias del mes de Agosto del año de mil setesientos i quarenta idos yo el Capn. Anttonio de hulibarri Alcalde Maior y capn. Aguerra desta dha Villa paresio antemi Gregorio Chespin vesino desta refenda Villa y me mostro una Mersed de tierras que el Señor tene. Coronel D. Gaspar Domingo de mendoza le abia consedido y en su bista pase yo dho Alcalde Maior ahas tierras que en esta Mersed si ta yestando en ellas y reconosidas coxi de lamano ael dho Gregorio Chespin ilo pasie por el las aranco sacate tiro piedras dio boses disiendo Viva el Rey de España mi Señor D. phelipe quinto que Dios guarde muchos años señalando le los linderos que son por la parte del horiente con tierras del Capn. Miguel Garsia de las Rivas por la parte del poniente asta llegar alas tierras de phelipepacheco por la parte del norte el camino real de los carros que sale desta Villa para el Alamo por la parte del sur una sequia Antigua que es el lindero de Juan de Arguello: yse Allaron adicha posesion phelipetafoia, Juan Antto. de Apodaca, Juan de Arguello, Juan Antto. de Archuleta aquienes les pregunte si sabian otenian notissia tubiera derecho aestas tierras respondieron todos ql ni lo sabian ni tenian notisia tubiera alguna otra persona derecho aellas mas que las abian tenido por del Capn. Juan Garsia de las rivas assi lo declaran ante mi dho Alcalde maior autuando por resetoria afal ta de escrivano Publico y Real que no lo ay en este Reyno en el presente papel por no corer de ningun sello en estas partes de que doi fee.

to PHELIPE TAFOLLA.
tto JUO. MANUEL CHIRINOS.

ANTTO. DE HULIVARRI
Juez Reseptor.

184 *Archive No. 180 from the Office of the Surveyor General of the Territory of New Mexico.*

Mr. Governor and Captain General:

Gregorio Crespin, resident of the villa of Santa Fé, placed at the feet of the greatness of your lordship, in all due form which may be required of me: And I say that whereas, I find myself loaded with obligations and without a piece of land so as to be able to plant in order to support my said obligations I have taken notice of a piece of land which is on the other side of the river, which is surplus (sobras) of Captain Juan Garzia de la rribas former resident of this said villa, and its boundaries are the following, on the east with lands of said Captain Juan Garzia, on the west with lands of Juan Phelipe Rodriguez, on the north with lands of Captain Sebastian de Vargas, and on the south, with the Alamo road, which I ask of the greatness of your lordship may be given to me by grant in the name of His Majesty, whom God preserve, and to concede me said land and give me royal possession which a grant recites, and I swear in due form this writing to be without malice: &c.

GREGORIO CRISPIN.

Auto.

At the villa of Santa Fé on the eighth day of the month of August in the year one thousand seven hundred and forty-two, I the Lieutenant Coronel Don Gaspar Domingo de Mendosa governor and captain general of this kingdom of New Mexico, in view of the foregoing writing, ought to direct and I directed that the alcade mayor of this villa Antonio de Ulibarri should go to the sitio of the lands which the petitioner asks, and identifying them, give him in the name of the King our lord, God preserve him, the grant which he asks for himself, his children and successors in complete title, observing in his giving, the circumstances and necessary and formal requisites, and particularly that of its being without damage to any third party. Thus I provided, ordered and signed without my attending witnesses for lack of royal and public escrivano of whom there is none, and in the present paper, no stamped paper being current in said kingdom; which I attest, &c.

DN. GASPAR DOMO. DE MENDOSA.

JOSEPH DE TERRUS.
JOSEPH TRUJILLO.

At the villa of Santa Fé on the eighth day of the month of August in the year one thousand seven hundred and forty-two, I Captain Anttonio de Hulibarri chief alcalde and war captain of this said villa, appeared before me Gregorio Chespin resident of this villa aforesaid, and showed me a grant of lands which the Señor Lieutenant Colonel Don Gaspar Domingo de Mendosa had conceded to him, and on seeing it, I the said chief alcalde went to the lands which this grant specifies, and being on them and having identified them,

I took the said Gregorio Chespin by the hand and led him over the lands, he pulled up grass, threw stones, gave shouts saying live the King of Spain my Lord Don Phelipe the Fifth, whom God preserve many years, showing him the boundaries which are on the east side with lands of Captain Miguel Garcia de las Rivas, on the west side as far as the lands of Phelipe Pacheco, on the north side the wagon road which goes from this villa towards the alamo, on the south side, an old acequia which is the boundary of Juan de Arguello, and there were present at said possession, Phelipe Tafoya, Juan Antonio de Apodaca, Juan de Arguello Juan Antonio de Archuleta, of whom I asked if they knew or had information that any one had a right to these lands; they all answered that they neither knew nor had information that any other person had a right to them, beyond the fact that they had been considered as belonging to Captain Juan Garcia de las Rivas; thus they declared before me said chief alcalde acting temporarily for lack of public and royal escrivano who is not to be found in this kingdom, on the present paper, because there is none of any seal current in these parts: which I attest.

ANTTO. DE HULIVARRI,
Juez Reseptor.

To.: PHELIPE TAFOLLA.
Tto.: JUO. MANUEL CHIRINOS.

185 No. 1.

In the United States Court of Private Land Claims.

MARIANO F. SENA
vs.
UNITED STATES.

Now comes the petitioner by his counsel, at the time of the trial of this cause, and moves the court to suppress the depositions of Susano Leyba, Nasario Gonzales, Jesus Narvais, Francisco Romero, Jose Benavides, Francisco Bustamante, Antonio Bustamante and Jose Benabides, heretofore taken herein, before one of the justices of this court, for the reason that none of the said witnesses are sick, infirm or otherwise unable to attend, but are actually in attendance on the court at the present time, as shown by the accompanying affidavit, and can be examined in open court upon the present trial.

F. W. CLANCY,
H. S. CLANCY,
Attorneys for Petitioner.

TERRITORY OF NEW MEXICO,
County of Santa Fé.

F. W. Clancy, being sworn, on his oath says that files of this cause show that on the 25th day of April, 1900, a subpœna was issued, directed to Nasario Gonzales, Jesus Narvais, Francisco Romero, Jose Benavides, Antonio Bustamante, Susano Leyba, and Francisco Bustamante, requiring them and each of them to appear before this court on the 30th of April, 1900, to testify in this cause on behalf of

the defendant; that the return of the United States marshal, endorsed on said subpœna, shows that it was served personally on each of said persons on the 25th day of April, 1900; that he is informed and believes that all of said witnesses are now in actual attendance on this court, and he knows that one of them, Nasario Gonzales, was in attendance on the 30th of April, 1900, and another, Francisco Romero, is today in attendance, having seen these two persons, with whom he is acquainted.

F. W. CLANCY.

Subscribed and sworn to before me this first day of May, 1900.

JAMES H. REEDER,
Clerk United States Court of Private Land Claims,
By IRENEO L. CHAVEZ, *Deputy.*

186 And be it further remembered that thereafter, to wit, on the first day of May, 1900, the same being a day of the regular April term, 1900, holden at Santa Fé, New Mexico, the following among other proceedings were had, to wit:

MARIANO F. SENA
vs.
UNITED STATES. } No. 278. Jose de Leyba Grant.

Now comes the said petitioner by his counsel, at this time of the trial of this cause, and moves the court to suppress the depositions of Susano Leyba, Nasario Gonsales, Jesus Narvais, Francisco Romero, Jose Benavides, Francisco Bustamante, Antonio Bustamante and Francisco Bustamante, heretofore taken herein before one of the justices of this court, for reasons set forth in his motion and accompanying affidavit of F. W. Clancy on file, and the court being sufficiently advised in the premises, denies said motion; it is therefore ordered by the court that said motion be and the same hereby is denied.

187 DEFENDANTS' EXHIBIT "A."

In the United States Court of Private Land Claims, Santa Fé, New Mexico.

MARIANO F. SENA
vs.
UNITED STATES. } No. 278. Jose de Leyba Grant.

Depositions taken in the above-entitled case, in the Federal building, on behalf of the Government, Santa Fé, New Mexico, on Friday, February 23rd, 1900, before Hon. Wilbur F. Stone, an associate justice of said court.

Appearances.

Mr. W. H. Pope, assistant United States attorney, appeared for the Government.

Mr. Edward L. Bartlett appeared for the American Turquoise Company.

No counsel appeared for the plaintiff.

NASARIO GONZALES, sworn on the part of the Government, testified upon direct examination by Mr. Pope as follows:

Q. State your name, age and residence.

A. My name is Nasario Gonzales, I am 83 years old, I reside in precinct No. 6, county of Santa Fé, New Mexico.

Q. What is the name of the settlement in which you live?

A. La Cienega.

Q. Where were you born?

A. In Bernalillo.

Q. How long have you lived at La Cienega?

A. Fifty-four years.

Q. You moved from Bernalillo to Cienega, did you?

A. Yes, sir.

Q. And have you lived there ever since?

A. Yes, sir.

Q. Have you a ranch there?

A. Yes, sir.

Q. What has been your business in life since you have lived in Cienega?

A. It has been in various lines; I have been farmer and stock-raiser, and I have been a merchant.

Q. Have you ever held any official positions in this county?

A. Yes, sir.

Q. I will get you to state what they were.

A. I have been three terms senator from the county of Santa
188 Fé in the legislature. I have been county commissioner.

Q. Do you know a place called the old pueblo of San Marcos?

A. Yes, sir.

Q. I will get you to state to what extent your — acquainted with the count-y between San Marcos on the south, and Galisteo?

A. Fifty years.

Q. Are you well, or otherwise, acquainted with that section of the country?

A. I am familiar with the land; I have been for 40 years the owner of the grant of the Spring of San Marcos.

Q. And you are acquainted, you said, with the country in between the Spring of San Marcos, and your ranch at Cienega?

A. Yes, sir. And I have been the owner of the Spring of San Marcos, of the grant of the Spring of San Marcos.

Q. Do you know the place down there that is now held by the turquoise company, Mr. McNulty, and the American Turquoise Company?

A. Yes, sir.

Q. How long have you known that place where the turquoise mine is now?

A. Ever since the time during the period of fifty and odd years.

Q. Did you ever have occasion to travel over that section of the country much, during the said fifty years?

A. Yes, sir.

Q. Have you ever had flocks that you pastured down there during that time?

A. For forty years I have had my ranch at the Spring of San Marcos, and had my cattle and sheep and horses there.

Q. And that country north of San Marcos, around the turquoise mine; have you ever pastured there around that section?

A. Yes, sir, always; they are at the same place.

Q. Since you have been living down there at Cienega, during these forty or fifty years, have you ever heard in that vicinity of a grant called the Jose de Leyba grant?

A. No, sir.

Q. Have you ever heard any one down there, or anywhere else, claiming a grant called the Jose de Leyba grant?

A. Never; not of my own knowledge, nor by tradition, have I ever heard about this.

Q. Have you made any enquiry about it at any time?

189 A. I have seen many title papers, and my father-in-law was a very well informed man, and he never told me about this anything.

Q. During that time that you have lived down there, have any one ever occupied this land around that turquoise mine, and between Cienega on the north and San Marcos on the south?

A. No, sir. Nobody has been there outside of the turquoise mine people; and now, in these last few years, one Pedro Mares and one Thomas made some entries there.

Q. Some entries down here in the United States Land Office?

A. I think so; they have their houses and they have plowed lands there.

Q. Before these people came who made these entries, was any one at any time occupying that land?

A. No, sir; never.

Q. Since you have been down there, from the very earliest time, has any one ever occupied that land, claiming it under a grant called the Jose de Leyba grant?

A. Never; I have never heard anything about such a person as Jose de Leyba.

Q. Have you ever heard anything of any one of late around there claiming under a grant made by Jose de Leyba, within the last year or two?

A. No, sir, nothing.

Q. Look at this map, which is a map of the grant attached to the petition, for the land that is claimed in this case.

A. I have very little knowledge about maps.

Q. I will explain the map to you; here is the San Marcos road, on the east of the tract of land that is claimed; here is the Arroyo de la Piedra on the south, and Coyote springs; here are the lands of the Cerrillos tract, and the Cienega tract on the west; and on the north is the road from the Pecos to Cerrillos. Ask him if he knows all these points that I have named?

A. Yes, sir.

Q. And do you know the land that is included within these points that I have mentioned?

A. Yes, sir.

Q. And are these the lands that you say you have known for fifty or more years?

A. Yes, sir.

Q. And are these the lands on which you say you pastured?

A. Yes, sir. I have said upon the grant of San Marcos,
190 and upon all of that land.

Q. Nobody ever objected to your using it for pasture?

A. No, sir. I used that land with the same freedom as I used my own.

Q. Did other people pasture on it, too?

A. Yes, sir.

Q. Did any of these people that pastured on it claim it under the Jose de Leyba grant?

A. No, sir.

Q. Did they claim it under any grant?

A. No, sir; it was never known.

Q. Now, when you went to that country, were there any ruins of houses, or any other ruins, within this tract now claimed as the Jose de Leyba grant, with the exception of the pueblo of San Marcos?

A. The pueblo of San Marcos is not on this grant, as they claim it.

Q. That is a separate grant, and it is south of this grant?

A. Yes, sir. I do not know where that tract is that they are claiming under that grant.

Q. I mean where I have shown you in this map here.

A. I understand.

Q. Are there any old ruins now down on this land?

A. There are no other ruins there, except the ruins of some huts that were built there by Jesus Narvais, who had constructed these huts for the use of his sons who were herding some sheep there.

Q. Do you remember when these huts were built?

A. Yes, sir.

Q. Is Jesus Narvais here today?

A. He is coming.

Q. Do you know where the Arroyo de la Piedra is?

A. Yes, sir.

Q. Where are these old huts with respect to that arroyo?

A. The Arroyo de la Piedra comes this way, and the Arroyo del Coyote comes down and empties into it on the south of the Arroyo de la Piedra; and that Arroyo de la Piedra is within the grant of San Marcos.

Q. That San Marcos grant was presented to the Court of Private Land Claims, was it not?

A. Yes, sir, it is already confirmed.

Q. You were the plaintiff in that case, were you not?

A. No, sir, I sold it.

191 Q. Were these old huts of Jesus Narvais, with respect to the Arroyo de la Piedra and the Coyote arroyo, right at the springs of Coyote?

A. Yes, sir.

Q. How long ago was it, that these huts were built?

A. About more or less, I do not think that they were build for over 20 years, more or less.

Q. Before these were built, were there any ruins of any kind, at or near the Coyote springs?

A. Nothing.

Q. Were there any ruins of any kind, inside of this tract represented on the map I have shown you?

A. There never have been, and there are none today.

Q. Did you ever hear of an arroyo down there, near the Coyote springs, or the Arroyo de la Piedra, called the Arroyo de lOregano?

A. I have never heard the name of Oregano arroyo mentioned.

Q. Have you ever heard of any such Arroyo del Oregano anywhere in that section of the country within miles of the turqu-ise mines?

A. No, sir, never.

Q. Did you ever hear of the Cuesta del Oregana de Oregano, down in the vicinity of the turquoise mine, or between the turquoise mine and San Marcos?

A. No, sir, never; there is nothing; there is not even a slope there; a cuesta I call a place where you go up the slope, but there is no cuesta down there; there is nothing.

Q. Did you ever hear of an arroyo called the Arroyo del Cuesta?

A. There is nothing; nothing of that kind down in that section of the country at all; there is nothing.

Q. Did you ever hear down in that section of the country of lands called the lands of Juan Garcia de las Rivas?

A. No, sir.

Q. Did you ever hear of the lands of Cienega, where you live, called the lands of Juan Garcia de las Rivas?

A. No, sir. I have numerous papers, very old papers, as far back as the conquest among them, and I did not find a single paper that mentioned any Garcia.

Q. Any Garcia de las Rivas?

A. No, sir.

Q. These papers to which you refer, did they relate to the lands of Cienega?

A. The lands of La Cienega.

192 Q. Do you know a road from Pecos to Cerrillos, coming south of the lands of Cienega?

A. I know a trail that I have known there ever since I came to that locality, that comes out down above Los Tanquos goes to Galisteo, and I have known no other.

Q. Does that road or trail run to the old Mexican settlement of Los Cerrillos, and Bonanza?

A. No, sir. This trail that I am referring to now comes out from

the little town of Los Tanquos, which is the oldest settlement to the north of the lands of La Cienega.

Q. East of Cienega, where you live, have you ever heard of any lands of Sebastin de Vargas?

A. No, sir. I think they lie here, close to the hills there used to be a grant called Sebastin de Vargas grant.

Q. These lands of Sebastin de Vargas lie east of the Camino del Medio, do they not?

A. East of the Camino del Medio.

Q. Have you ever heard of the lands of Sebastin de Vargas west of that grant?

A. No, sir.

Q. How far is that Camino de en Medio from Cienega?

A. It may be from 12 to 14 miles, more or less.

Q. That is the road from Santa Fé to Galisteo, is it, the Camino de en Medio?

A. Yes, sir. There are two roads, the best traveled road goes below the middle road.

Q. The Camino de en Medio comes from the direction of San Cristobal towards Santa Fé, and comes into the road that goes to Galisteo?

A. It comes into this road going from Santa Fé to Galisteo at the Arroyo Hondo.

Q. Do you know the old road running from Cienega to Galisteo?

A. The only road that has been there is that trail that I have mentioned a while ago. Afterwards I used to have lands at Galisteo and I used to raise quite considerable crops, and I made a road over that same trail.

Q. And that was the first wagon road from Cienega to Galisteo, was it not?

A. Yes, sir.

Q. How does that road run with respect to the direction in
193 which the turquoise mine and Mr. McNulty's mines are located, east or west?

A. To the north; it goes by that hill going to Galisteo.

Q. Does it go to the sunrise or to the sunset from that hill?

A. Towards the sunrise.

Q. Is there any old road from Cienega to Galisteo, west or to the sunset, from the cerro on which these turquoise mines are located?

A. There is a road that I made with my own wagon, going to La Baca on the Arroyo Galisteo, and that is the way people call it the road of Nasario Gonzales.

Q. Before you built that road, was there any road there?

A. No, sir. There were trails made by cattle coming for water at Cerrillos.

Q. But the old trail was traveled by people going to Galisteo, was on the east?

A. Yes, sir, very far from it.

Q. Within this tract, the map of which I have shown you, is there any monte?

A. There are very few spruce trees.

Q. There is no timber, or any monte or any woods, to any considerable extent?

A. There are a few spruce trees; there has never been any timber.

Q. Is it or is it not true, that most of that country is a bare, level plain?

A. Yes, sir.

Q. Within this tract, as claimed, that I have shown you and a map of it, what water is there?

A. None.

Q. What about this Coyote spring that you have mentioned?

A. The waters of Coyote springs are within the grant of San Marcos. The water in the Arroyo de la Piedra is also within the grant of San Marcos.

Q. How much of a spring is the Coyote spring?

A. Very little water; it come out from a rock, and gushes out from the rock and makes little pools, and the stock drink it.

Q. Is there enough water there to plant corn?

A. No, sir, nothing.

Q. Is there within this tract any evidence of any land having been cultivated in the past?

A. No, sir.

194 Q. When you went there, was there any evidence of any land having been planted?

A. No, sir.

Q. Around near this Coyote spring, or anywhere else on this tract?

A. No, sir, nothing.

Q. What is the southern line of the land of the Cienega on the south?

A. The south boundary line is Los Cerrillos.

Q. The grant of Los Cerrillos?

A. Yes, sir. The north boundary line of the grant of Los Cerrillos is the south boundary line of La Cienega.

Q. What natural object is there that divides it?

A. It is a hill, a ridge that washes it towards Cerrillos and towards La Cienega.

Q. Is there any high hill down there?

A. There is a mountain or peak.

Q. The cerro that divides them is right at the center of the divide, as you cross on the top?

A. Yes, sir.

Q. Were there any old people living at Cienega, when you first went there?

A. Ever since the time of the conquest.

Q. Did you ever talk with them about the natural objects around there, and the old grants around there, and things of that kind?

A. Yes, sir. It is natural to talk about everything, and I had friendly relations with all old people there.

Q. And you say you never heard from any of them at any time anything about a grant called the Jose de Leyba grant?

A. Never.

Q. Did you ever hear from them anything as to the sitio of the Cienega tract?

A. Yes, sir.

Q. Who did you understand that sitio was given to?

A. From some of the old title papers, it appears that the title to the land was granted to Juan Pais Hurtado, and from this Juan Pais Hurtado it was transferred to Manuel Tenorio de Alva.

Q. Did you ever hear anything about Juan Garcia de las Rivas ever having anything to do with the Sitio de Cienega?

A. I never heard that said, and there is no paper that shows that fact.

Q. Do you know anything about an old will in connection with this Cienega tract?

A. Yes, sir, I know. Manuel Tenorio de Alva's will. I
195 have it myself.

Q. Have you it here?

A. No, sir. I did not know to have it here.

Q. Is it registered in the probate clerk's office of this county?

A. I believe it is.

Q. I will get you to state whether it is possible to cultivate any portion of the land included within this tract, the map of which I have shown you, attached to plaintiff's petition in this case?

A. Yes, sir. It is possible, but without water.

Q. You have to depend on rains?

A. Yes, sir.

JESUS NARVAIS, sworn on the part of the Government, testified upon direct examination by Mr. Pope as follows:

Q. State your name, age and residence.

A. My name is Jesus Narvais; I was born in 1819.

Q. Where were you born?

A. I was born in Cochiti.

Q. Where do you live now?

A. At La Cienega.

Q. How long have you lived at La Cienega?

A. For many years; that is, almost all my life.

Q. How old were you when you went there to live?

A. I was ten years old. My mother had been born at that place, and my grandfather.

Q. Did you know that place La Cienega before you went there to live?

A. Yes, sir, my mother used to be from that place, but my mother had been married to a man who had been brought up by a Spanish priest.

Q. Have you lived any at Pino's ranch?

A. Yes, sir.

Q. How far is that from Don Nasario Gonzales' house, the witness who has just testified?

A. About a mile.

Q. That is in what is called La Cienega, is it?

A. Yes, sir.

Q. What has been your occupation in life?
A. Farmer. At the present time I have no occupation, because I am very old.
Q. Have you ever been engaged in stock-raising?
A. Yes, sir. My own, some few cows.
Q. Do you know where the pueblo of San Marcos is?
A. Yes, sir.
Q. Do you know where the road of San Marcos is?
196 A. I do not know which road that is, but I know the old road that comes from the side of these little hills.
Q. The old road from Santa Fé to San Marcos, on the east from the turquoise mine?
A. I do not know which one the old road was. I know this road, because there is no other road.
Q. Do you know where the American Turquoise mine and Mr. McNulty's mine are located?
A. Yes, sir.
Q. Is that the place called Cerro Palado?
A. Yes, sir.
Q. Do you know where the old road from Cienega to Galisteo ran, when you first went to that country?
A. I think it is the road that comes there to the other side of the hill; that old road that goes to the other side of the hill.
Q. Does it run to the sunrise side or the sunset side of this Cerro Palado on which Mr. McNulty's mines are located?
A. Towards the sunrise.
Q. Is there a road running there now, from La Cienega to Galisteo on the west side of that hill?
A. Yes, sir.
Q. Who built that road?
A. I believe Don Nasario Gonzales did.
Q. Was there any old road there on that side, prior to that time?
A. There was another road a little further to the north; I think there was an old road.
Q. Where did that go to, and from where?
A. To Galisteo from La Cienega.
Q. Can you read and write?
A. No, sir. I never had any opportunity to learn how to read or write.
Q. Are you acquainted with the section of country around northwest from the pueblo of San Marcos, and the Arroyo de la Piedra, for six or seven miles?
A. I know that land.
Q. How long have you known them?
A. About 20 or 25 years that I have known it well.
Q. Did you ever pasture on these lands?
A. Yes, sir. I was there; I used to have my little children there at the place called, Ojo, spring.
Q. Do you know where the Arroyo de la Piedra is?
A. Yes, sir.

197 Q. Are there any ruins of houses, or any ruins of any kind on that land?

A. I never knew ruins of any kind; a little above the spring on a little hill I myself constructed a very small hut there, for my sons.

Q. Is that in ruins now?

A. I think it is there yet. I have not been there since.

Q. Were there any ruins of houses, or anything to show that houses had ever been around in the neighborhood of Coyote springs, before you built?

A. No, sir, and I do not think anybody would have considered it, because it is not a land for cultivation, for farming.

Q. Why is it not a land for cultivation?

A. Because it is very hilly, unless it is a little above the spring at Coyote, towards the little valley where Mr. Thomas has a ranch, and also a son-in-law of mine, Diego Maeres.

Q. What about water; is there any water there?

A. They have a well. They made a well. Thomas made one and my son-in-law made two wells.

Q. Outside of the wells, is there any water there for cultivation?

A. Outside of the wells there is no water, with the exception of the little spring of Coyote.

Q. How much, if any, can be cultivated from the water of the Coyote spring?

A. Nothing; there is scarcely enough for the stock.

Q. What about timber around there, on this tract, from the Coyote spring, north, and around there?

A. There is only scrubby bushes and these sage bushes, and a few spruce trees.

Q. Most of the country is bare, is it not?

A. Yes, sir. A plain, almost all of it.

Q. Since you have been living there, have you ever heard of a grant in that vicinity from the Coyote spring north to the Turquoise mine, and up towards Cienega and Pino's ranch, called the Jose de Leyba grant?

A. I have not known it; very recently I heard statements to that effect, but very little of it.

Q. Did you ever hear any one claiming land down there as the Jose de Leyba grant?

A. No, sir.

198 Q. At any time?

A. No, sir, never at no time.

Q. When you went there, was anybody occupying that land?

A. No, sir.

Q. When you pastured on that land, did any one ever object to your using it for pasturage, claiming it as the Jose de Leyba grant?

A. Nobody, I had not heard that name mentioned until very recently.

Q. Did any one else pasture on that land besides yourself?

A. Yes, sir, several persons.

Q. Who did?

A. Don Nasario Gonzales, and his brothers-in-law, Don Jose Baca and Don Manuel Baca, and various other persons.

Q. Did they claim the land?

A. No, sir.

Q. It was common pasturage ground, was it, or not?

A. It was so recognized; it was so called.

Q. Do you know where the Arroyo de la Piedra is?

A. Yes, sir.

Q. You have been to the San Marcos spring, have you, a number of times?

A. Yes, sir.

Q. And to Galisteo?

A. Yes, sir.

Q. You say you live at Coyote spring?

A. Yes, sir. That is, I had my herd of cattle there, or cows; I do not live there; I was there during the summer.

Q. Do you know an arroyo that is called the Arroyo del Coyote?

A. Yes, sir.

Q. Now, have you ever heard of an arroyo called the Arroyo del Oregano?

A. No, sir.

Q. Or of a cuesta called the Cuesta de Oregano?

A. I never heard that name.

Q. Or an arroyo called the arroyo of the Cuesta del Oregano?

A. Neither.

Q. Did you ever talk with the old people when you first went to that country, about the lands, or about the natural objects?

A. No, sir.

Q. Did you at any time ever hear the old people speak of the place called the Cuesta de Oregano?

A. I have not even heard that name.

199 Q. Did yeu ever hear of the lands of Juan Garcia de las Rivas in that vicinity?

A. No, sir.

Q. At or near La Cienega, did you ever hear of any such man?

A. No, sir.

Q. Did you ever hear it said that the lands of Cienega were the lands of Juan Garcia de las Rivas?

A. They might have been, but I was not informed as to that.

Q. Did you ever hear of the lands of Sebastin de Vargas down there near the lands of Cienega?

A. Yes, sir. I heard about this.

Q. Where are they?

A. They are at La Cienega.

Q. In the sitio of La Cienega?

A. I think so.

Q. Did you ever hear of any lands of Sebastin de Vargas east of the sitio of La Cienega?

A. Yes, sir. I do not understand very much about these matters.

Q. Do you know where these lands are?

A. They used to say that they are at Los Alamos, or at La Cienega, I think is what I am informed.

Q. Los Alamos is at the ranch of Mr. Lamy, is it not?

A. Yes, sir.

Q. Do you know an arroyo called the Arroyo Gallinas?

A. Yes, sir.

Q. The Cañada de Galesteo, is that the same as the Arroyo de la Piedra?

A. Yes, sir.

Q. Do you know how far the lands of the Cienega extend east?

A. No, sir, I am not informed as to that.

Q. Did you ever hear from the old people anything about Don Francisco Baca y Torres?

A. Yes, sir, he used to talk about the lands. But I did not have very much conversation with him.

Q. You have no recollection of his having stated about the lands of the Cienega extending east of the Camina de en Medio?

A. I only knew that middle road coming from the place called Las Bocas.

FRANCISCO ROMERO, sworn on the part of the Government, testified upon direct examination by Mr. Pope as follows:—

Q. What is your name, age, and residence?

A. Francisco Romero, I am going on 83 years old; I was
200 born in the county of Santa Fé at La Cienega; I live at La Cieneguilla.

Q. How far is that from Cienega?

A. A little over a mile, perhaps.

Q. How long did you live in Cieneguilla?

A. Since I was born.

Q. You know where the Cerro Palado is down in that country?

A. Yes, sir.

Q. The cerro on which the turquoise mine and Mr. McNulty's mine are located?

A. Yes, sir.

Q. Do you -now where the Arroyo de la Piedra is, a little further south?

A. Yes, sir.

Q. Do you know where the Coyote spring is there?

A. Yes, sir.

Q. Do you know where the San Marco pueblo is?

A. Yes, sir.

Q. Do you know where the old road running from San Marcos to Santa Fé is down there?

A. Yes, sir.

Q. How long have you known all these points?

A. As far back as I can remember.

Q. Have you been to all these points?

A. Yes, sir.

Q. To what extent have you been over the country, around the Cerro Palado and these various points?

A. I have been many times on several occasions.

Q. What about the country from Cerro Palado to Cienega; are you acquainted with that section of the country?

A. I know the land.

Q. What business have you been engaged in?

A. Farming.

Q. Have you ever had any stock?

A. Yes, sir.

Q. Did you ever have any sheep down in that country?

A. Yes, sir.

Q. When you were a boy did you ever go far out there with sheep?

A. Yes, sir.

Q. Did you go around that part of the country at Cerro Palado, and down to the Coyote spring?

A. Yes, sir.

Q. Whose sheep were you taking care of then?

A. Mine.

Q. I mean, when you were a boy.

A. We used to have cows and horses also, my own. I always herd my own stock. I do not have stock belonging to anybody else.

Q. Did your father live at Cienega?

201 A. I did not know my father. I must have been four or five years old when my father died, but I know who my father was.

Q. Did other people who were at Cienaga have flocks that they herded out there, too, when you first came to the age of reason?

A. Yes, sir, they always did.

Q. At that time, when you first came to the age of reason, or at any other time, have you ever heard of their being down there, a grant called the Jose de Leyba grant?

A. Never in my life.

Q. At any time have you ever heard of any one claiming such a grant down there between La Cienega, towards the north, and Coyote spring towards the south?

A. No, sir, I have known of no one claiming it.

Q. Have you ever known of any one occupying that land?

A. I have never, not until very recently, but an American man made a house there, and some Mexicans also.

Q. Did any of these people claim a grant down there called the Jose de Leyba grant, or any other grant?

A. No, sir.

Q. Did any of these people when you were a boy living at La Cienega, claim to own this land, either as a grant or otherwise?

A. No, sir.

Q. How was it claimed as to being public pasture or common pasture?

A. Common.

Q. Did you ever hear of any one objecting to people pasturing down there over that country?

A. I never did.

Q. On the ground that there was a grant there, or any other reason for not being allowed to pasture?

A. No, sir, never.

Q. Did you ever hear of an arroyo down there near the Coyote spring called the Arroyo del Oregano?

A. No, sir, I never heard that.

Q. Did you ever hear of a cuesta down there called the Cuesta de Oregano?

A. No, sir.

Q. Did you ever hear of an arroyo down in that section near the Coyote spring, or anywhere else, called the arroyo of the Cuesta del Oregano?

A. Never.

202 Q. You say that you were born at La Cienega?

A. Yes, sir.

Q. Did you ever hear of the lands of Juan Garcia de las Rivas?

A. No, sir.

Q. Did you ever hear of the lands of La Cienega being called the lands of Juan Garcia de las Rivas?

A. No, sir, I never heard of that.

Q. Were there any old people at La Cienega, when you went there?

A. Yes, sir, for many years, I guess.

Q. Did you know these old people?

A. Yes, sir, I knew many of them.

Q. Did you ever hear of them talking about these lands around there, and these natural objects around there?

A. No, sir. I never heard them.

Q. Who are the oldest people living down there now at La Cienega and around that section of the country?

A. I think that I am one of them; I live at Cieneguilla, and I think this gentleman Bustamente here and Don Nasario Gonzales that has testified, and Jesus Narvais; I think they are about my age.

Q. So that these old men that are here as witnesses today, are they or not the oldest men down in that section?

A. Yes, sir. Antonio Bustamente, also. (Pointing to him in the court-room.) I believe they are the oldest people there.

—. When you first became acquainted with that section of the country, as a boy, state whether not there were any ruins of houses, or ruins of corrals, there.

A. There were no ruins.

Q. On this tract?

A. No, sir, I do not know any ruins.

Q. Was there any cultivated land on that tract, or occupied at any time?

A. No, sir, there was none.

Q. Was there ever anything to show that the land had been cultivated; any place on that tract?

A. No, sir.

Q. Is there any water for cultivation on that tract?

A. No, sir.
Q. Is there any monte on that tract?
A. No, sir, there is none. It is all plain.
Q. Are there any old ruins now on that tract at any place?
A. Not at the present time; there have been some little
203 shanties that have been constructed by Narvass here, the witness who has just testified.
Q. Where are they with respect to the Coyote springs; how far from the springs?
A. It is somewhat near, on the top of a little hill.
Q. Before these jacals were built by Mr. Narvais, were there any ruins down there of any kind?
A. No, sir, there was nothing.
Q. Is there enough water in that Coyote spring to irrigate?
A. No, sir, there is none; very little water; it is enough for drinking purposes.
Q. Do you know the old road from La Cienega to Galisteo?
A. There used to be nothing there but trails, and subsequently Mr. Gonzales made a road that has since been called the Gonzales road.
Q. How did these trails running there from Galisteo to Cienega with respect to the Cerro Palado run; to the sunrise or to the sunset?
A. To the east, very far to the east.
Q. Were these trails there when you were a boy or not?
A. They were trails made by the cattle, or perhaps they may have gone to Galisteo, I do not know.
Q. When you were a boy, how did people go from La Cienega to Galisteo?
A. They used to travel over the trail, always going above Cerro Palado.
Q. And how with respect to the east or west, to the east or to the west of the Cerro Palado?
A. To the east, and also there used to be a trail to the west. The road after that time was opened up *up* when Tuerto was discovered, this road was constructed.
Q. But that road was constructed in recent years, was it not?
A. Yes, sir. It was made at that time when these mines were discovered.
Q. About twenty years ago?
A. More than that.
Q. While you were a boy, or since you were a boy?
A. I estimate it from 25 to 30 years when that Tuerto mine was discovered. That was when the carts used to travel over that trail, and partially made a road of it.

204 FRANCISCO BUSTAMENTE, sworn on the part of the Government, testified upon direct examination by Mr. Pope as follows:

Q. What is your name, age and residence?

A. Francisco Bustamento, 82 going on to 83 years old; I live at La Cienega.

Q. How long have you lived at La Cienega?

A. During all my life.

Q. What has been your occupation in life?

A. Farmer.

Q. Have you ever had anything to do with stock, sheep?

A. Yes, sir.

Q. Have you ever pastured sheep or stock?

A. Yes, sir.

Q. When you were a boy, did you ever take care of sheep?

A. Yes, sir, when I was a boy, I used to herd sheep, and also when I was a grown man, I have herded cattle.

Q. Do you know where the Turquoise mines and Mr. McNulty's mine are, near the Cerro Palado?

A. Yes, sir.

Q. Have you ever been to that place?

A. Yes, sir.

Q. Many or few times?

A. I have been there many times when I was a herder.

Q. Pastured around there, did you?

A. Yes, sir.

Q. Did you ever pasture on these plains towards the sunrise, from that Cerro Palado?

A. Yes, sir.

Q. Do you know where the Arroyo de la Piedra is?

A. Yes, sir.

Q. And the Coyote spring?

A. Also.

Q. And the Arroyo del Coyote?

A. Also.

Q. How long have you known all these places?

A. I have been there ever since I was born; I must have been seven years old when I knew those places.

Q. When you were a boy, did you ever pasture around these places, Coyote spring, Arroyo de la Piedra, and other places near by?

A. Yes, sir.

Q. State whether or not you ever pastured from there up to the Cerro Palado, and still further north out on the plains?

A. Yes, sir.

Q. When you were a boy, how many peopule used to pasture out there?

A. There were several; the late Mr. Baca y Tenorio; Mr. Ignacio Baca, also deceased, and other persons.

205 Q. People that lived at Cienega and other places around pastured there, did they?

A. Yes, sir.

Q. Have you ever heard of a grant down in this country called the Jose de Leyba grant?

A. It is about six or seven years at the most that I heard it mentioned for the first time.

Q. You never heard it mentioned when you were a boy?

A. No, sir, never.

Q. Besides these people that were pasturing there that lived at Cienega and places around there, were anybody occupying these lands when you were a boy, and afterwards?

A. Never.

Q. Was any one living on this tract?

A. No, sir.

Q. Was any one using that tract, claiming it as a grant to Jose de Leyba, or any one else?

A. No, sir.

Q. These people that pastured there, that lived at Cienega and around there; did they claim that land?

A. No, sir.

Q. How was that land used as to pasturage; was it as private property of some one, or as common pasture lands?

A. As a common, public pasture for all.

Q. Did you ever ask permission to pasture there from any of your people at any time?

A. Never.

Q. Did any one ever make any objections to its being used by you, or any one else, to pasture there, from your earliest recollection?

A. No, sir.

Q. Where did your father live?

A. At the place where I live at La Cienega.

Q. How long did he live there before your birth, if you ever heard?

A. I do not know how long he lived there, but he lived there until he died, about 18 years ago, and his boys lived there.

Q. Do you know where your grandfather lived?

A. In Santa Cruz.

Q. Have you ever heard of the land of La Cienega?

A. Yes, sir.

Q. Did you ever talk with your father about these lands?

A. Not with my father, but I heard other people talk about them.

Q. Did you ever hear any old men talk about them?

A. Yes, sir.

Q. Did you ever hear any old men talk about the grants around there and the natural objects around there?

A. Yes, sir.

206 Q. Did you ever hear them talk of these things when you were a young man or a boy?

A. Yes, sir.

Q. At that time, or at any time subsequent, did you ever hear of an arroyo down there near the Coyote spring, called the Arroyo de la Piedra?

A. Yes, sir.

Q. Did you know an arroyo down there called the Arroyo del Oregano?

A. I never heard anything about it until about six or seven years ago, and I heard of this Arroyo Oregano mentioned for the first time.

Q. Is that about the time when they started to talk about this Leyba grant?

A. Yes, sir.

Q. Did you ever hear of lands called the lands of Juan Garcia de las Rivis?

A. No, sir.

Q. Did you ever hear of the lands of the Cienega being called by that name?

A. No, sir.

Q. Did you ever hear, when you were a boy, or when you were a man of there being any ruins on this tract of land that we have been talking about and that you have testified as to?

A. No, sir.

Q. I mean this tract that is now claimed as the tract of Jose de Leyba?

A. I never saw any.

Q. Did you ever hear of that when you were a boy?

A. No, sir. I never heard of it when I was young nor now, because I always lived there.

Q. And did you ever see any ruins on this tract?

A. No, sir.

Q. This tract extends north from La Cienega to the Coyote spring on the south, and extending out some miles from the Cerro Palado; did you ever hear on that tract of there being any ruins, or did you ever see any?

A. Never.

Q. Did you ever see anything that indicated that anybody had ever lived on this tract, or used it?

A. No, sir.

Q. Did you ever see any lands there that looked as if they had been cultivated at any time?

A. No, sir, never.

Q. Around the Coyote spring, when you first knew that spring, was there any evidence of lands having been cultivated?

A. No, sir, never.

207 Q. Is there any water on this tract?

A. This little spring runs about the distance of three yards; it is a little spring, and does not run; it is not a running spring.

Q. Is that the only spring on this land?

A. Yes, sir.

Q. Can you irrigate from that spring?

A. No, sir.

Q. Did you ever hear, down there in the vicinity of the Coyote spring, or anywhere else, between Cienega and Galisteo, of a cuesta called Cuesta del Oregano?

A. No, sir.

Q. Or an arroyo called the arroyo of the Cuesta del Oregano?
A. No, sir.
Q. Is there any cuesta down there near the Coyote spring?
A. No, sir. There are little bits of slopes or little hills.
Q. Is there any monte on this tract in question?
A. No, sir; there is no timber.
Q. How are these plains that you referred to located there east of the Cerro Palado, as to being timbered or not?
A. They are not timbered; they only have these amole plants.

JOSE VENAVIDEZ, sworn on the part of the Government, testified on direct examination by Mr. Pope, as follows:

Q. State your name, age and residence.
A. My name is Jose Venadivez; I was born in 1827, in Santa Fé.
Q. Where do you live now?
A. I live at the La Cienega, at the place of Nazario Gonzales.
Q. How far from the house where Don Nazario Gonzales lives?
A. About 300 varas.
Q. How long have you lived at that place?
A. From 1846.
Q. Have you lived there constantly ever since?
A. Yes, sir.
Q. What has been your occupation in live?
A. Laborer.
Q. Ever been engaged in stock business, or sheep or anything of the kind?
A. Yes, sir.
Q. Ever have sheep or cattle out on the range?
A. I have not owned the- myself; I have herded them.
Q. Where have you herded them?
A. Here at the plains of the Arroyo de la Piedra, and of the Arroyo del Cuesta.
208 Q. Do you know where the Cerro Palado is, on which this turquoise mine of Mr. McNulty is situated?
A. Yes, sir.
Q. Is it near the place called Cerrillos or La Bonanza?
A. That is what at present we call La Bonanza.
Q. Have you ever herded sheep or cattle north of that Arroyo de la Piedra?
A. Yes, sir.
Q. Do you know where the Arroyo del Coyote is located?
A. Yes, sir.
Q. Have you ever heard of cattle there north of it for some six or seven miles?
A. Yes, sir.
Q. How old were you when you were herding cattle down in that country?
A. In 1854.
Q. Did anybody else herd cattle or sheep down there at that time?

A. No, there were no sheep except the sheep of Antonio Armijo; that party called Jose Baca y Torres was the only one who had sheep at La Cienega.

Q. Since then, have people herded sheep or cattle on that range?

A. Only cattle and horses were the only kind of stock in La Cienega.

Q. And the people of La Cienega herded cattle and horses there, did they?

A. Yes, sir, on that plain.

Q. Since you have been living at La Cienega, or at any other time, have you ever heard of a grant covering that country from the Ojo del Coyote north and including the Cerro Palado, called the Jose de Leyba grant?

A. No, sir.

Q. You know where the Ojo del Coyote is, do you not?

A. Yes, sir. It is at an arroyo, and there are some rocks there, and it comes out of a rock.

Q. Have you ever heard of a grant called the Jose de Leyba grant in this county?

A. No, sir.

Q. Did you ever hear of any one living on or occupying that tract at the time when you first went to La Cienega, except these people that you have mentioned?

A. No, sir. We had planted fields at Los Tanquos, and Los Golondrinos, and they still herd there cows or cattle south of that place.

209 Q. Did these people claim any interest in that land by grant or otherwise?

A. No, sir.

Q. Did anybody complain of their using it, or interfere with their using it, on account of the grant on it, belonging to them called the Jose de Leyba grant?

A. No, sir.

Q. When you first knew that tract, and herded on it, state whether or not there were any ruins on it, or anything of that kind, belonging to the people who formerly lived on it or occupied it?

A. There were no ruins, with the exception of a few stones that appeared to be a foundation of a house right near the spring; at the present time there are some adobe houses.

Q. Do you know whose ruins these are?

A. They say now that they belonged to my cousin; an American located there.

Q. Do you know any ruins that Jesus Chaves built down there?

A. I saw only an adobe house there; I do not know whether he built it or not.

Q. Did you ever see any ruins down there?

A. No, sir.

Q. Is your cousin, Mr. Diego Mares, still alive?

A. He is alive.

Q. Is he the man who built this house, the ruins of which you say you saw near the Coyote spring?

A. No, sir.
Q. Who built that house?
A. I do not know.
Q. Did you ever hear from any one that these ruins you spoke of near the Coyote spring, were the ruins of the house of Jose de Leyba, or any one claiming a grant of Jose de Leyba?
A. No, sir.
Q. You state you know the Arroyo de la Piedra down there?
A. I know the Arroyo del Coyote; I know that arroyo. There are two Arroyos de la Piedra; one is below San Marcos, and the other is where the arroyo of San Marcos comes down.
Q. Did you ever hear of an arroyo down there called the Arroyo del Oregano?
A. No, sir.
Q. Did you ever hear of a cuesta down there called the Cuesta del Oregano?
A. No, sir.
Q. Did you ever hear of an arroyo down there called the arroyo of the Cuesta del Oregano?
A. I did not see an arroyo at that place. There has been no arroyo there.
210 Q. Did you ever hear of any lands of Juan Garcia de las Rivis down there at La Cienega?
A. I have not heard that name, at Cienega; I have not heard anything about that.
Q. Did you ever hear that the lands of La Cienega were the lands of Juan Garcia de las Rivis?
A. No, sir, I have not heard.
Q. Did you know of a road from La Cienega to Galisteo, when you first went down to that country?
A. I knew a road that is little far away from the house, or a little distance from the house, of Don Nasario Gonzales; beyond a little hill where that road goes there is a place that is now called La Bonanza, and they traveled that road with carts to El Coyote.
Q. Was that the road to Galisteo, when you first went down there?
A. Yes, sir.
Q. On what side of the Cerro Palado did that road go; to the sunrise or to the sunset; east or west?
A. Towards the sunrise, the east.

ANTONIO BUSTAMENTS, sworn on the part of the Government, testified upon direct examination by Mr. Pope as follows:

Q. State your name, age, and residence?
A. My name is Antonio Bustamente; I am 73 years and 2 months old; I live in Los Tanquos.
Q. How far is that from Don Nasario Gonzales' house in Cienega?
A. It may be more or less 1500 yds.
Q. How long have you lived there?
A. All my life.

Q. Born there, were you?
A. Yes, sir.
Q. You know where the Cerro Palado is, on which the turquoise mine and Mr. McNulty's mines are located?
A. Yes, sir.
Q. How long have you known that place?
A. Since I was born, since I can remember.
Q. Do you know the road from Santa Fé to San Marcos, to the east from that cerro?
A. Yes, sir.
Q. Do you know what is called the Ojeto del Coyote to the south there?
A. Yes, sir.
Q. Do you know the Arroyo de la Piedra?
A. Yes, sir.
Q. And the Arroyo del Coyote near there?
A. It is the same thing.

Q. So you know that country, then, do you, from the Otejo
211 del Coyote up north to La Cienega, and east to this San Marcos road?

A. Yes, sir, I know all that tract.
Q. And the Cerro Palado is inside of this tract, is it?
A. Yes, sir.
Q. How long have you known that tract of country?
A. Since I can remember.
Q. Did you ever have cattle on that tract, or sheep?
A. I had cows there.
Q. When you were a young man or a boy, did you have any herding of cattle to do on that tract?
A. I herded cattle there from 1850 to 1892, when a horse threw me down and broke my arm, and since that time I have not been out with them.
Q. Prior to 1850, did you ever go over this tract at any time at various places?
A. Yes, sir, to the placers and Galisteo, and to the arroyo, looking for animals belonging to other parties who would employ me for that purpose.
Q. During the time you have known this tract of land, up to the present time, have you ever heard of its being claimed as the Jose de Leyba grant?
A. I never heard that, and I never knew that gentleman, and I never knew his name, until recently.
Q. At any time since you have known that tract, has any one objected to your using it, or any part of it, claiming it as a grant made to Jose de Leyba?
A. No, sir.
Q. From your earliest recollection, who has used that land, and occupied it for pasturage and other things?
A. The neighbors there used it to pasture their animals there, and also myself, and horses.

Q. Was it claimed by your neighbors and by yourself as your property, or was it considered common public pasture ground?

A. Only by herding on it; by pasturing on it.

Q. Do I understand then, that it was or was not public pasture ground?

A. They so considered it common pasture ground; at that time it was public.

Q. How has it been ever since that time?

A. It has always been held that way as public pasture,
212 until recently they have begun to work these mines.

Q. Has any one at any time, from the time when you were a boy up to the present time, ever made any objection to the use of this ground by the neighbors there, as common pasture ground?

A. No, sir.

Q. Did you ever hear of any arroyo down there near or at the Arroyo de la Piedra, and the Coyote spring, called the Arroyo del Oregano?

A. No, sir.

Q. Did you ever hear of an arroyo down there called the arroyo of the Cuesta del Oregano?

A. I only know that cañon near the Coyote spring, and the other cañon towards these high hills, that is called the Cañon de los Arroyos.

Q. Did you ever hear either of them called the Arroyo del Oregano?

A. No, sir.

Q. Or the arroyo of the Cuesta del Oregano?

A. No, sir.

Q. Did you ever hear of the Cuesta del Oregano, down in that country?

A. No, sir.

Q. Did you ever hear of the lands of Juan Garcia de las Rivis down in that country?

A. No, sir.

Q. Did you ever hear of the lands of Cienega called the lands of Juan Garcia de las Rivis?

A. No, sir.

Q. In going over that country when you were a boy, and since then, state whether or not you ever found any ruins at any place?

A. No, sir.

Q. Did you ever find any indication that people had formerly lived there, or had cultivated lands there, in this tract of land?

A. No, sir, no ruins, except the places where shepherds had kept their flock for a few days, and then go away.

Q. Down there near the Ojito del Coyote, were there any ruins of houses, or anything of that kind, when you first knew this country?

A. At the place called Ojita del Coyote, there were indications just as I have said; places were herders had their sheep and stock for awhile, and would go away.

Q. That was all, was it?

A. Yes, sir, that was all.

Q. There were no ruins of any old houses there, or anything of that kind?

A. No, sir.

213 Q. Any evidence of land that had been cultivated down there?

A. No, sir, there were none to be seen there.

Q. Can you irrigate from that Coyote spring?

A. No, sir. It is not sufficient except for drinking purposes, and even for that you have to dig it out. It comes out from the rock, and collects in small quantities.

Q. Is there any water on this tract at any place at all?

A. There is below, at the Arroyo de la Piedra.

Q. That is, in the Ojito del Coyote, is it not?

A. Yes, sir. There is one right by the roadside to San Marcos.

Q. Outside of that, is there any other water on this tract?

A. No, sir.

Q. Is there any monte on this tract?

A. Little pines of timber like on these hills that you see here (pointing to the hills from the window).

Q. How about corn-planting land upon this tract?

A. No, sir, the little valleys are very narrow.

Q. And no water in any of them?

A. No, sir.

Q. Did you know, when you were a boy, where the road from Cienega to Galisteo ran?

A. Yes, sir.

Q. Where did it run with respect to the Cerro Palado; east or west of it?

A. To the east.

Q. How long since you have been down to the Ojite del Coyote?

A. About four or three years since I was there.

Q. Did you see the ruins of an old adobe house then near there?

A. I have seen no other ruins there except the ruins of a house that was a jacal built by the sons of this man Narvais, when they were herding cattle, and they built these houses for to shelter themselves, when they needed shelter in their herding.

Q. How long ago was that, about?

A. I do not know; I do not remember how long it was; they were there only a few days herding their cattle.

Q. You remember when it was done, do you?

A. Yes, sir, I remember it well.

214 Q. These were what you call jacals, were they not?

A. No, it was a little bit of a house, or a shanty, they built while they stayed there.

SUSANO LEYBA, sworn on the part of the Government, testified upon direct examination by Mr. Pope as follows:

Q. State your name, age and residence.

A. My name is Susano Leyba; at present I live at Los Cerrillos, the town of Cerrillos. I have been living there for about eight

years, but I have always been at La Cienega. At La Cienega I was with my sons.

Q. How long did you live there?

A. Up to now.

Q. How old did you say you are?

A. Sixty-six.

Q. Do you know the country down there south of Cienega as far as San Marcos?

A. Yes, sir, I know it.

Q. Do you know where the Cerro Palado is, on which the Turquoise mine is situated, and Mr. McNulty's mines?

A. Yes, sir.

Q. Do you know the road that goes from Santa Fé down to the San Marcos pueblo, to the east of that Cerro Palado?

A. Yes, sir.

Q. Do you know all of that country that lies in west of this cerro and north of La Cienega, and as far south as the Ojito del Coyote?

A. Yes.

Q. How long have you known that country, all of it?

A. Ever since I can remember.

Q. Ever pasture on it, or anything of that kind?

A. Yes, sir. At least for no less than four or five years, as an employee in the service of the Delgados.

Q. When you were a boy, did you have any occasion to go over it, to pasture or graze?

A. By the owners. In the service of the owners of the cattle; I was a servant of theirs and it was by their orders.

Q. When you were a boy, did you learn from the old people around there the names of the places, the natural objects?

A. Yes, sir, all of them.

Q. Did you ever hear of an arroyo down there at any time called the Arroyo del Oregano?

A. No, sir.

215 Q. Did you ever hear of a cuesta called the Cuesta del Oregano?

A. No, sir.

Q. Or the arroyo of the Cuesta del Oregano?

A. No, sir.

Q. When you were a young man and since then, have you ever heard of the land of Juan Garcia de las Rivis?

A. Never.

Q. Did you ever hear of the lands of Los Cienegos?

A. Yes, sir.

Q. Did you ever hear them called the lands of Juan Garcia de las Rivis?

A. No, sir.

Q. Did you ever hear of a grant covering this country that you have described, this country around between San Marcos pueblo on the east, and the La Cienega lands on the west, and the Ojito del

Coyote on the south; did you ever hear of a grant covering that country, called the grant of Jose de Leyba?

A. No, sir.

Q. Did you ever hear any one claiming a grant down there called the Jose de Leyba grant, at any time?

A. No, sir.

Q. Your name, I believe, is Susano Leyba?

A. Yes, sir.

Q. Are there any other Leybas living there?

A. At the place that I live there is but myself, and one of my sisters; one of my brothers lives in Las Vegas.

Q. Did your father live at Cienega, too?

A. Yes, sir, until he died.

Q. Do you claim that tract, or your brothers or sisters, or any of them, claim a grant known and called the Jose de Leyba grant?

A. No, sir.

Q. Did you ever claim any grant down there by that name?

A. No, sir.

Q. Or by any other name?

A. No, sir.

Q. What was your father's name?

A. Cayatano de Leyba.

Q. What was your grandfather's name?

A. Juan Ignacio Leyba.

Q. Do you know of a grant in your grandfather's name, or have you ever heard of it?

A. No, sir.

Q. Are there any other members of the Leyba family living at Peña Blanca?

A. Yes, sir, there are.

Q. Do you know them?

A. Very little.

216 Q. Have you ever heard of them claiming a grant down there?

A. No, sir, never heard that.

Q. Or any other member of the Leyba family claiming that tract?

A. No, sir.

Q. Now you have spoken of herding cattle, down over that tract of land, when you were a boy; sheep and cattle belonging to others?

A. Yes, sir.

Q. Were there a number of people, or few people herding cattle over that tract, from the time since you have first known that tract?

A. Yes, sir.

Q. Did all the other people from La Cienega herd and pasture their stock there?

A. They did at times.

Q. Did they claim this land as their property, or not?

A. No, sir. I do not know; I never heard of any one of those who had animals herded there, but everybody went out there and pastured on it.

Q. Did any one claiming an interest in the grant called the Jose de Leyba grant, or any other grant, ever try to stop them from pasturing down there?

A. I do not remember that anybody did make a claim to it.

Q. Did you ever hear of any such claims being made?

A. No, sir.

Q. Do you know where the Ojito del Coyote is located?

A. Yes, sir, I know it well.

Q. When you first knew that tract, were there any ruins of any kind on it?

A. No, sir. It was only a little spring there, hardly sufficient for drinking and cooking.

Q. Any ruins near that spring, or houses, or anything of that kind?

A. No, sir.

Q. No ruins of any kind there?

A. There were no ruins at all. There were little bits of buildings for herders.

Q. But nothing of a permanent nature?

A. No, sir.

Q. Were there anything of a permanent nature anywhere on this tract as far west as La Cienega, and as far east as San Marcos pueblo?

A. There was nothing. I do not know of them. I do not know them.

Q. Did you ever go, when you were a boy, from La Cienega
217 to Galisteo?

Q. Yes, sir. When I was about seven years old I was there; over that road, and also coming back with my grandfather to the house of the Delgados; my father used to live there.

Q. Did you know, then, where the old road from Cienega to Galisteo ran at that time?

A. Yes, sir, the road crossed the little dam of the Delgados.

Q. And where did it run with respect to the Cerro Palado; east or west?

A. The Camino del Galisteo is to the north from the old road to Galisteo.

Q. Is it north of the Cerro Palado, and does it pass between it and the sunrise or between the Cerro Palado and the sunset?

A. But this road that passed the Cerro Palado was always called the road of San Marcos; since I can remember it used to be called the Camino del San Marcos.

Q. I am talking about the road that goes from La Cienega to Galisteo; does it run on the east side or the west side of the Cerro Palado?

A. On the east.

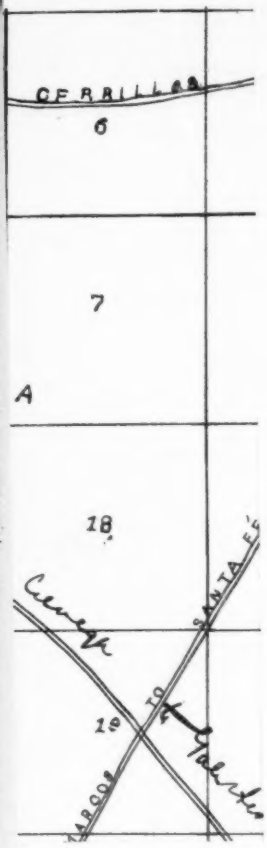
FRANCISCO ROMERO, recalled for the Government.

Mr. POPE:

Q. You have already testified in this case, have you not?
A. Yes, sir.
Q. Do you know a man named Marcos Costillo who lives here in Santa Fé?
A. Yes, sir.
Q. Since coming here did you have any conversation with him lately regarding testifying in this case of the Jose de Leyba grant?
A. Some days ago I was with him; I have not seen him now; I was with him several days ago.
Q. Here in Santa Fé?
A. Yes, sir.
Q. How long ago was it?
A. About fifteen or twenty days ago.
Q. Just tell the court what he said to you, if anything, about your testifying in this case, and what he said?
A. He told me that Mariano Sena had seen him to ask me to tell me to come here to the land office; that he was there; then I told him that if Mariano Sena wanted to see me, to come to me; that I was busy; and then he said that Mariano Sena wanted me to testify in the case of Jose de Leyba, and then I told him again
218 that if Sena wanted to see me, to come to me, that I was busy; and then he told me there is money in this matter, and if I would testify, I might be able to make some money, and I told him, if there was anything in it, that it was not necessary to be paid any money to testify, and I then insisted that if Sena wanted to see me, to go and see me. After that I never saw him again, nor never saw Mr. Sena.
Q. Where did this conversation occur, here in the city of Santa Fé?
A. In the plaza. In the park, on the seats; in the park.
Q. Did you say it was about fifteen or twenty days ago?
A. Yes, sir, about that time.
Q. Was any one else present at that conversation?
A. No, sir.

NASARIO GONZALES, recalled for the Government by Mr. Pope.

Q. Do you know how far east the lands of La Cienega extend?
A. I do not know, because the grant papers were either burned or destroyed.
Q. Have you ever heard from the old people, or by tradition or otherwise, how far east they extend?
A. They say, up to the middle road, camino del medio; to the edge of the timber in the hills here. (Pointing to the hills from the window). And the Government gave the right to those who had settled these lands to file small holding claims, and when we registered under the small holding act, we registered up to the road going from here to Albuquerque.



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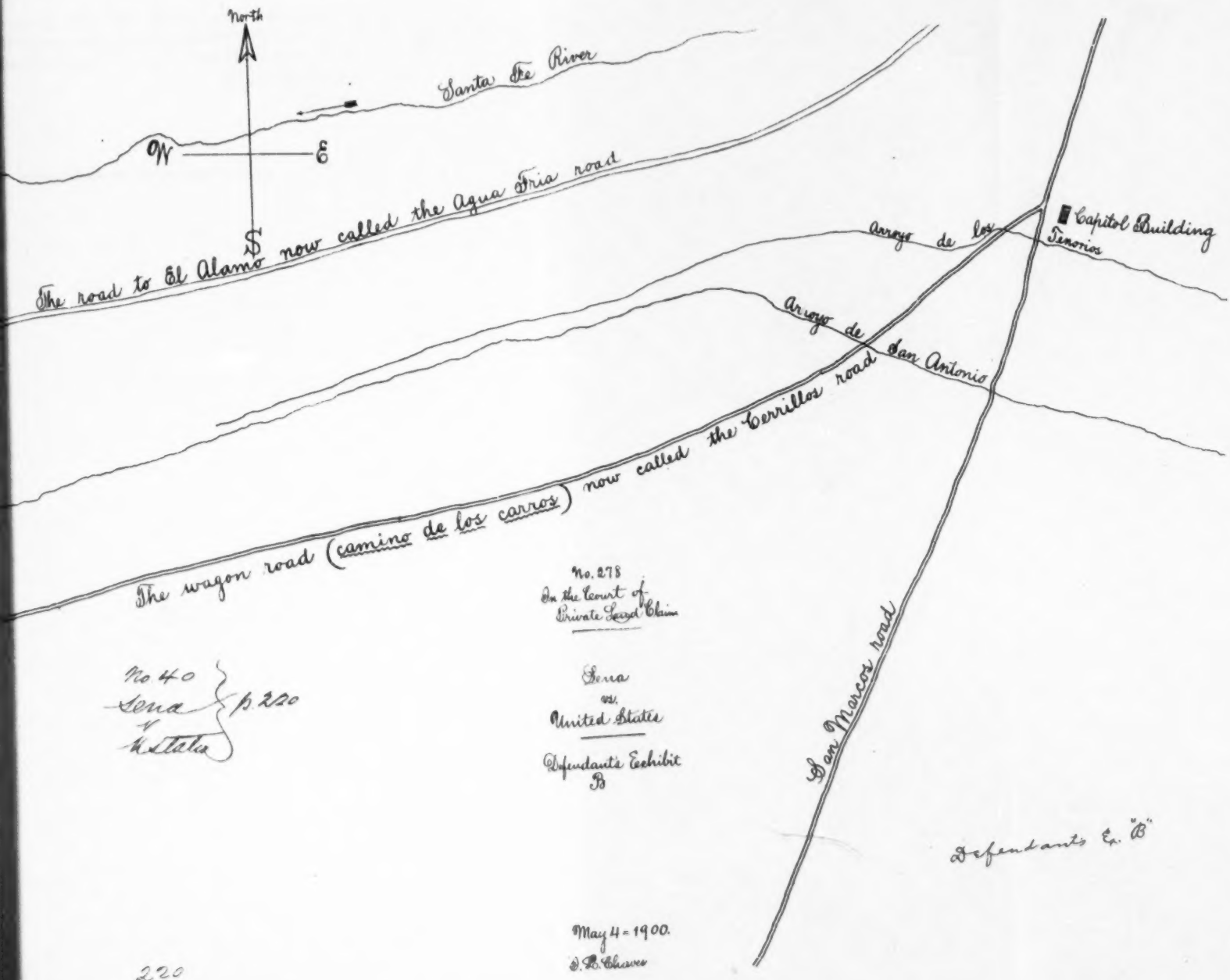

No. 278
In the Court of
Private Land Claim

Sena
vs.
United States

Defendant's Exhibit
B

Defendants Ex. "B"

No 40
Sena
v
U. States
p. 220

May 4 - 1900.
J. B. Chaves

220

I hereby certify that the above and foregoing thirty-two pages contain a full, true and correct transcript of all my shorthand notes taken on the hearing of the above-entitled case in open court.

W. J. McPHERSON,
Official Stenographer.

(Here follow maps marked pp. 219 & 220.)

* * * * * * *

225 DEFENDANT'S EX. "C-1."

Translation of the certified copy of the grant to Alfonso Rael de Aguilar of date July 23rd 1744.

Year 1744.

Grant made to Alfonso Rael de Aguilar revalidating that which appears in the original of lands beyond the walls of this town of Santa Fé, under the boundaries which are expressed therein, etc.

Petition for Grant.

Señor sergeant major governor and captain general:

I, Alfonso Rael de Aguilar, resident of this town of Santa Fé, appear before the greatness of your lordship, in the most approved form of right I can, and say señor, that I having registered a piece of vacant and unsettled land, last year (1739) before the Colonel Don Gaspar Domingo de Mendozo, governor and captain general that was of the lands in the name of His Majesty (God protect him) and he having taken away from the said grant, therefore I come to beseech your lordship to be pleased to give me a new grant of the lands that I may have them planted, which said lands are on the other side of the river of this town and their boundaries are: On the north, the public highway that goes to the alamo; on the south, the Camino de los Carros; on the east, by the lands of Beatriz Lucerno, and on the west, by lands of Domingo Valdez; wherefore with the profoundest submission, I, by your lordship—that you may be pleased to grant me the land in the name of the King, our lord (may God protect him) that therein I may receive benefit and grace. I swear in due form that this my petition is not in prejudice, and what is necessary, etc.

ALPHONSO RAEL DE AGUILAR.

Order of Reference to the Alcalde.

SANTA FÉ, *July 21st*, 1744.

I, having seen this writing, I received it as presented and
226 in attention to the lands which the petitioner asks, the alcalde mayor of this town will inform me, if they are royal vacant domain, and if prejudice will follow to any third person in making the grant of them.

So I provide and ordered, etc.

CODALLOS.

Report of Alcalde.

In the town of Santa Fé, the 22nd day of July, 1744, in obedience to the order of the Sergeant Major Don Joachin Codallos y Rabal, governor and captain general of this kingdom, I, Antonio de Uli-

barri, alcalde mayor of this town state that my information to your lordship concerning the lands petitioned for as a grant, is that the petitioner has occupied them a part of the time extrajudicially, and the other part of the time by virtue of the grant, and that this has been without any prejudice to any third person to the present time. May your lordship be pleased to make the grant petitioned for to serve a person who has many times served His Majesty and whose deceased father was employed in the highest military and political service to this kingdom, and petitioner has an increasing family, a wife and children.

This is my information to Your Lordship, so that you may order that which you shall consider for the best, etc.

ANTONIO DE ULIBARRI.

Decree of Grant.

In this town of Santa Fé, on the 23rd day of July, 1744, I, Sergeant Major Don Joachin Codallos y Rabal, governor and captain general of this kingdom of New Mexico, its provinces and frontiers, having seen the petition of Alphonso Rael de Aguilar contained in the writing on the foregoing page, and the information by
227 Antonio de Ulibarri, alcalde mayor and war captain of this said town, stating no prejudice will be done to any other settler, and that the lands petitioned for are royal domain, therefore in the name of His Majesty (God preserve him), I make to the petitioner, his heirs and successors the grant of the said lands, that he may cultivate and use them, as he may deem best, without prejudice to any third person.

The possession of the said land, I commission Antonio de Ulibarri to give in the place and as asked for, and with the boundaries described in each direction, marking the boundaries with landmarks showing the limits. So I provide and command, and sign this with the witnesses of my assistance, for want of a royal notary public, there being none in this kingdom. Which I certify.

Witness:

JUAN FRANCISCO DE ROA Y CARRILLO.
JOAQUIN CODALLOS Y RABAL.

Witness:

ANTONIO DE AROMBURA.

Act of Possession.

In the town of Santa Fé, the 24th day of July 1744, I, Antonio de Ulibarri, alcalde mayor and war captain of this town, state that in fulfillment of the command of Señor Sergeant Major Don Joaquin Codallos y Rabal, governor and captain general of this kingdom, I passed over the lands asked for by Alphonso Rael de Aguilar, and being thereon I took him by the hand and he passed over them, pulled up grass, threw stones and shouted "Long live the King of Spain, my lord," in sign of royal possession without any objection,

I showing him the boundaries in the four directions, which were: on the east, with the lands of Melchor Rodriguez, formerly of Beatriz Lucero, to an arroyo called that of Diego Belasquez, and thence -long said east side, along the boundaries of the land of Tomas Tapia, and on the west bounded by the lands of Domingo Baldes,
228–230 and on the north, the public highway that goes from this town to the Alamo, and on the south, the road called the Camino de los Carros, which possession he received in the presence of the two witnesses, who were Gregorio Garduño and Francisco Rendon, both residents of this town.

And that it may appear I act with the same witnesses as my assisting witnesses for lack of a royal notary public, there being none in this kingdom, and on this paper, there being no sealed paper current in these parts. All of which I certify.

ANTONIO DE ULIBARRI,
Acting Judge.

Witness:
GREGORIO GARDUÑO.

Witness:
FRANCISCO RENDON.

Certificate.

OFFICE OF THE SURVEYOR GENERAL,
SANTA FÉ, N. M., *June 20th*, 1878.

I certify that the foregoing is a true and correct copy of the original on file in this office.

DAVID J. MILLER,
Secretary in Chief of This Office.

* * * * * * *

231 DEFENDANTS' EX. "D–1"—TRANSLATION.

Translation of Jose Romo de Vera grant.

Suit No. 121.

To the governor and captain general:

I, Jose Romo de Vera, a citizen of this town appear before Your Excellency, with due legal formality, and I state, that having a large family consisting of my own wife and children, and my said wife Dona Angela de Baldez y Marquez, being as in fact she is a descendant, through both the paternal and maternal lines, of conquerors and settlers of this Kingdom of New Mexico, and not having any lands for the support of my said family, I apply to the sovereign authority of Your Excellency, and in order that in the name of His Majesty (whom may God preserve) Your Excellency will please adjudicate to me a piece of land which is wild and unsettled, down the river from this town; and which on the east is bounded by lands of Domingo Valdez, and on the west, by Juan Jose de Archuleta, and on the north, by Catalina Maese, and on the south by

the wagon road which goes out of this town. In view of all which I ask and pray Your Excellency to please command that what I have requested be done, by which I shall be favored. And I swear in due legal form whatever is necessary, etc.

JOSEPH ROMO DE VERA. [RUBRIC.]

At the town of Santa Fé of New Mexico, on the eighth day of the month of January of the year one thousand seven hundred and forty-six, before me, Major Don Joaquin Codallos y Rabal, governor and captain general of said kingdom, this petition was presented by the party therein named, and I treated it as properly filed, and in the name of His Majesty (whom may God preserve) I would and did make to him a grant of the piece of land which is therein described,
and which the petitioner asks for, with the boundaries he
232 cites, for the said Don Jose Romo de Vera, his heirs and successors, without prejudice to a third party, to whom with just title and right it may belong; of which land the chief alcalde of this town, Don Antonio de Ulibarri, will give to him royal and personal possession, after first citing the surrounding neighbors; and this petition and decree, with the other proceedings shall be delivered to the said Don Jose Romo de Vera, in order that they may serve him as a title.

And thus I decreed ordered and signed it with the witnesses in my attendance, for lack of a royal or public notary, of which there is none in this kingdom. I certify.

JOAQUIN CODALLOS Y RABAL. [RUBRIC.]

Witness:
PHELIPE JACOBO DE UNANUE. [RUBRIC.]

Witness:
ANTONIO DE ARAMBURU. [RUBRIC.]

At the town of Santa Fé on the thirtieth day of the month of January of the year one thousand seven hundred and forty-six, I Don Antonio de Ulibarri, chief alcalde and war captain of this town, having examined the petition of Don Jose Romo de Vera, and the grant on the preceding page, which grant is made to him for the lands therein described outside of the walls of this said town, under which he asked and requested me to give him royal and personal possession of said lands, and citation having been first served on Felipe Tafoya and the other surrounding neighbors, and carrying it into effect I took him by the right hand and conveyed him over said lands; the boundaries of which are the same that are named by the said Don Jose Romo in said petition; where he pulled up herbs, threw stones and performed other acts of true possession and shouted saying: "Long live Philip the Fifth, our King and lord," (whom may God preserve many years), in whose name he received said
grant, and no person appeared to make any objection to
233–235 said possession, which he took quietly and peaceably, and he acknowledged that said lands had been delivered to him, with all their pastures, entrances and exits, uses and customs,

rights and servitudes; and I, the said chief alcalde, who certify to it all, signed it as a special justice acting with my attending witnesses for lack of a public or royal notary of which there is none in this kingdom. I certify.

ANTONIO DE ULIBARRI, [RUBRIC.]
Special Justice.

DON JOSE ROMO DE VERA. [RUBRIC.]

Witness:
JOSE MIGUEL GARDUÑO. [RUBRIC.]

Witness:
FELIPE TAFOYA. [RUBRIC.]

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236 DEFENDANTS' EX. "E-1."

Archive No. 24.

(Translation.)

Petition.

Lieut. colonel of the royal armies, governor and captain general of this kingdom and province of New Mexico:

I, Juan Jose de Archuleta, resident of this city of Santa Fé, appear before Your Majesty in the most proper form, which is proper and right to do, and which appears to me proper, and say, that I register a piece of land which is vacant and unoccupied, which is below the capital city, one-fourth of a league; the boundaries of which are: On the part of the east, Tierras de Catalina Maese; and upon the west, the lands of Captain Diego Arias; and on the part of the north, the main road; and on the south, El Camino de los Carros; which lands I ask from the goodness of your catholic breast De Bs. which you will give me in the name of the King our lord (whom God protect many years) for me and my two children who are already of age, and for which of Your Lordship we ask and supplicate with the truth as best understood, will be very much obliged if you will grant us that which we ask and we will receive well and thankfully from the justice which we implore from V. S. and swear in proper form as to everything right and necessary, etc.

JUAN JOSEPH DE ARCHULETA.

Order.

SANTA FÉ, *August* 17, 1742.

The principal alcalde will report what standing has this application, with respect to these lands.

MENDOZA.

237 *Report.*

On the 19th day of the month of August, 1742, I, alcalde mayor, Antonio de Ulibarri, declare that in this petition there is no prejudice of third parties, nor of the King, my master, you can dispose of the same at your volition.

ANTONIO DE ULIBARRI.

Grant.

In the city of Santa Fé, on the 20th day of August, of the year 1742, I, the lieutenant colonel, Gaspar Domingo de Mendoza, governor and captain general of this Kingdom of New Mexico, seeing the report of Captain Antonio de Ulibarri, alcalde mayor of this city, should order and do order that there shall be given to the petitioner, in the name of His Majesty (God protect him) the grant which is named in this document, that he shall have it for his own to cultivate and improve. So I order, provide and sign with those of my assistance, with the reservation customary which is practiced in said kingdom. Which I certify.

D'N GASPAR DOMINGO DE MENDOZA.

JOSEPH DE TERRUS.
JUAN PHL. DE RIVERA.

Royal Possession.

I, Captain Antonio de Ulibarri, alcalde mayor of this city of Santa Fé, say, that I went to the land which is named in this document, and being on said lands, I took by the hand Juan Jose Archuleta, and I led him over it, he pulled up grass, he threw stones, he shouted saying "Long live the King my lord. God protect him," and showing the boundaries, which are the boundaries of Catalina Maese, they being on the east, two hundred and sixty varas, measuring to the west; and on the north, the public road, which leads to this city; and on the south, "El Camino de los Carros;" and
238–240 that it shall appear in this manner, I sign with two witnesses of my assistance in want of a notary public, there being none in this kingdom; in the present paper there being none sealed in these parts. To which I subscribed.

ANTONIO ULIBARRI,
Juez Receptor.

GREGORIO GARDUÑO.

* * * * * * *

241 (DEFENDANTS' EX. "F" 1—TRANSLATION.)

Archive 527.

Petition.

Señor lieutenant colonel, governor and captain general:

I, Catarina Maese, resident of this town of Santa Fé, appear before Your Excellency, in what seems to me to be most approved in the form of right, and say, Señor, that my father (God bless him) having come into this kingdom as one of the conquerors and reconquerors in the service of the King, our lord (God preserve him), in which royal service he died, and His Majesty not having given him any piece of land upon which to live or plant, and although I have a house I obtained it by purchase, and finding myself with a grandson, an orphan and destitute and having nothing upon which to maintain him, by way of land to plant, therefore I have requested a piece of land vacant and unsettled on the other side of the river of this town, which lands are the surplus (sobrantes) of the lands which Your Excellency granted to Domingo Valdez, and are bounded on the north, by the Acequia Madre, on the south, by a wooded arroyo; on the east, by lands of said Domingo Valdez and on the west, by lands of Captain Miguel de Coca, which with the most profound submission, I request and beseech Your Excellency will grant to me in the name of His Majesty, hoping as I do hope from your catholic breast that you will be pleased in mercy and justice to do me the service I request and as I have requested that thereon I shall receive benefit and grace, and I swear in full rightful form that this is not in prejudice, and all that is necessary, etc.

CATARINA MAESE.

Grant.

In the town of Santa Fé, capital of this Kingdom of New
242 Mexico, on this 22nd day of July, 1742, I, Lieutenant Colonel Don Gaspar Domingo de Mendoza, governor and captain general of said kingdom, having received as presented and having examined this application of the petitioner, I at once, as I ought to order, do order the alcalde mayor of this city, Antonio de Ulibarri, to give to Catarina Maese possession of the lands that she petitions for, and which in the name of His Majesty (God preserve him), I grant to her. Said alcalde to proceed with all the necessary steps and forms in giving possession of grants, and in particular seeing that no prejudice is done to any third party, assigning those lands that may be for planting and cultivating with their boundaries, clearly and distinctly. So I provide, order and sign in the form customary in this kingdom, and on common paper, there being no other current, etc.

DON GASPAR DOMINGO DE MENDOZA.

JOSE DE TERRUS.
GREGORIO GARDUÑO

Act of Possession.

In this city of Santa Fe, the 3rd day of August, 1742, I Captain Antonio de Ulibarri, alcalde mayor and war captain of the town certify that in the fulfilment of that ordered in his decree by Lieutenant Colonel Don Gaspar Domingo de Mendoza, I proceeded to the lands petitioned for by Catarina Maese and being thereon I took her by the hand and with her passed over the said lands, she plucked up grass, cast stones, and shouted in a loud voice saying: "Long live the King of Spain, my lord," and I showed her the boundaries, it being from where the boundaries of Domingo Valdez reach, so that the boundary serving said Valdez as a western boundary serves Catalina Maese as a boundary on the east; whence I
243–245 measured downwards, that is, to the west 210 full varas, and upon the south an arroyo that passes through the middle of the plain and for the north side another acequia which is on the right side of the road which comes to this city by the ranch of Captain Diego de Arias. At this possession were present and as witnesses Juan Manuel Chirinos and Gregorio Graduño, who signed with me, being also my assisting witnesses, acting for want of a royal notary public, there being none in this kingdom, and made on this present paper, there being none of the sealed on this part; which I certify.

ANTONIO DE ULIBARRI,
Acting Judge.

Witnesses:
GREGORIO GARDUÑO.
JUAN MANUEL CHIRINOS.

* * * * * * *

246 (DEFENDANTS' EX. "G" 1—TRANSLATION.)

Archive 1043.

Translation.

Sir governor and captain general:

I, Domingo Valdez, resident of this city of Santa Fé, appear before the greatness of Your Excellency and I say sir, that being married to a grand-daughter of Ana Maria Pacheco, deceased, who was the wife of Captain Don Diego Arias (may he rest in peace), and my said wife being one of the lawful heirs of the said Ana Maria Pacheco, Don Diego Arias showed me the portion of lands which appertained to my wife and having done so verbally and not in writing, as was natural, he being the executor of Ana Maria Pacheco and I being satisfied that what had been shown me was correct and having enjoyed it for the period of eleven years without trouble as the legitimate owner and being satisfied that said lands which were shown me are not within the grant and it being highly prejudicial to me that any person should get in there as being the entrance and exit for some little goats I have with which I maintain my poor

family and not having any entrance elsewhere, the greatness of Your Excellency will be pleased to grant me the same looking on me with your accustomed charity, all of which I hope of Your Excellency, and said piece of land is from my house to an arroyo which goes down to the house of Captain Miguel de Coca, and from east to west what I have cultivated, without going higher or lower.

In consideration of all which I beg and pray that Your Excellency will be pleased to do as I have petitioned as being justice which I hope for from the Christian breast of Your Excellency, and I swear in due form that this my petition is not malicious and in what is necessary, etc.

DOMINGO VALDEZ.

247 SANTA FÉ. *Third of June, seventeen hundred and forty-two.*

The chief alcalde Antonio de Ulibarri will report to me if what the petitioner prays for is proper and if proper it shall be done as he prays.

MENDOZA.

In the city of Santa Fé on the fifth day of June, in the year seventeen hundred and forty-four in obedience to what is decreed by the Lord Lieutenant Colonel Don Gaspar Domingo de Mendoza, governor and captain general of this kingdom, I, the chief alcalde of this city, Antonio de Ulibarri, went to the lands of Domingo Valdez which he petitions for in his memorial and I took him by the hand and walked him over said land, he plucked grass, threw stones, shouted in sign of royal possession and in order that this may appear I signed. His boundaries being on the east, a holy cross; on the west, a heap of stones, with another holy cross; on the south, an arroyo which lies on the wagon road (camino de los carros) where there is another large holy cross; on the north with his own lands which he inherited from his wife Ana Maria Marquez, which is all included in this possession, and because it is true I signed the same with two assisting witnesses for want of a public or royal notary, of which there are none in this kingdom, on this present paper because there is none stamped current in these parts, to which I certify.

ANTONIO DE ULIBARRI,
Delegate Judge.

Witnesses:
ALFONSO RAEL DE AGUILAR.
GREGORIO GARDUÑO.

248 (DEFENDANTS' EX. H 1—TRANSLATION.)

Archive No. 961.

Translation.

Petition.

Hon. lieutenant colonel, chief adjutant of the royal armies of His Majesty, governor and captain general of this kingdom and provinces of New Mexico:

Felipe Tafoya, resident of the town of Santa Fé, appear before Your Excellency with the deepest feeling of my obligation, and say, Your Honor, that I registered a piece of land bread growing, which is commonly called the ranch of Belasquez, which is found on the other side of the river of this town, abandoned and unoccupied; there is contained in said land sufficient for planting two fanegas of wheat and one of corn (dos fanegas de trigo de sembradura y una de maiz) for finding myself with a family of wife and children and not having had, nor do I have a piece of land by grant which the King my lord has given me; having served under pay from time to time, nine years, I am also legitimate son of the ensign Antonio Tafoya, who all his life served the King, our lord, and is now so serving him, and has never had any grant made in the name of the King, our lord, of land whatsoever, and being the truth that he has served the King from the reconquest and has not had wherewith to give lands to his children, to which it appears to me proper to solicit a place where I can have to cultivate to maintain my obligations, for all of which of Your Worship, I ask and supplicate that you will be pleased to make and determine that which is asked, which is justice that which I implore, in the greatness of your power as accustomed, and I swear in proper form that this my writing is not in malice and in that which is necessary, etc.

FELIPE TAFOYA.

249 *Grant.*

I, the lieutenant colonel, Don Gaspar Domingo de Mendoza, governor and captain general of said kingdom, have seen the present document made and presented that which should be I command, the alcalde mayor, Antonio de Ulibarri, who is of the jurisdiction and city of Santa Fé, to put in possession Felipe Tafoya of the grant of land which he asks that he may be able to possess for his children and his heirs, better right given from the part of His Majesty (God preserve him) with the obligation that he has to occupy and cultivate and all the requirements and circumstances which is required by the royal laws, and particularly that which is proper to do no injury to third party, so I have ordered and signed with my witnesses, who are assisting me, there being no royal notary and in the present paper which does not carry the seal, I authorize the same.

GASPAR DOMINGO DE MENDOZA.

BERNARDO BUSTAMANTE.
JOSEPH DE TERRUS.

Possession.

In the city of Santa Fé chief city of this kingdom and province of New Mexico, on the 2nd day of June, A. D. 1742, I, Captain Antonio de Ulibarri, alcalde mayor and war captain of this city, in conformance with my obligation for order made by Lieut. Col. Don Gaspar Domingo de Mendoza, governor and captain general of this kingdom for the benefit of Felipe Tafoya, I said alcalde mayor, visited the site of the land which this grant names, in company with two witnesses, who were Captain Alfonso Rael de Aguilar and Domingo Baldes, that they should serve as witnesses, and all
250–255 being at said place, I took the aforesaid Felipe Tafoya by the hand, and I walked him over said land and he pulled up grass, threw stones, shouted, saying, "— live the King of Spain, my lord, Philip the Fifth, whom may God preserve!" And that it will for all time serve this royal possession I sign with two witnesses, showing them the boundaries, which are the following: On the east, an arroyo, which is the boundary of the lands of Felipe Pacheco; on the west, a large cedar tree, where I ordered a mound of stones and mud to be put; on the north, an acequia madre, very old, which is the boundary of the lands of Gregorio Garduño; on the south, the wagon road (camino de los carros) remaining free the entrances and exits to the timber, and that it will so appear at all times, I sign it acting as delegated judge, for lack of a notary, there being none in this kingdom, nor in two hundred leagues distant, with two attending witnesses and in the present paper, there being none with the seal in these parts, to which I certify.

ANTONIO DE ULIBARRI,
Delegated Judge.

ALPHONSO REAL DE AGUILAR.
DOMINGO BENAVIDES.

* * * * * * *

256 DEFENDANTS' EX. "I" 1—TRANSLATION.

Translation.

Archive No. 962.

Petition.

Señor governor and captain general of this royal garrison of the town of Santa Fé, at the feet of Your Excellency, in the most approved and respectful form, I state that being forced to seek a piece of land which I may be able to cultivate whereby to make enough to maintain those dependent upon me, I registered a piece of land which is down the river, on the other side; and its boundaries are as follows: On the east, it bounds with the lands of Felipe Pacheco; on the west, with some tall cedars and an arroyo; on the north, with another arroyo and the ruins of a house, and upon the south by a road that goes to El Alamo. The said piece of land I ask (in the name of my master, the King), you will give me as a grant, and that you

will order the alcalde mayor of this town to place me in possession, and I swear that this my petition is not in prejudice, and what is necessary, etc.

TOMAS DE TAPIA.

Grant and Order of Possession.

SANTA FÉ, *June 2nd*, 1742.

The alcalde mayor, Antonio de Ulibarri, will place the petitioner herein in possession of the piece of land designated in the grant that I made to Felipe Tafoya.

MENDOZA.

Act of Possession.

In the town of Santa Fé, June 3rd 1742, I, Antonio de Ulibarri, chief alcalde and war captain of the said town, in obedience to the command of Lieutenant Colonel Don Gaspar Domingo de Mendoza, I proceeded to said land, took Tomas Tapia by the hand and 257-260 gave him royal possession in the name of His Majesty (God preserve him) and he pulling up grass and casting stones shouted in sign of royal possession. I designating to him the boundaries which are: on the east side, a landmark of Felipe Tafoya; on the west, a large crooked cedar tree; on the north, a very ancient main ditch (acequia madre), and on the south, the public wagon road (camino real de carros) and that in all time it may so appear, I sign this, acting as special justice, with my two attending witnesses and in the absence of any public or royal notary, there being none in this kingdom, and on this plain paper, there being no stamped paper current in these parts. To which I certify.

ANTONIO DE ULIBARRI, [RUBRIC.]
Acting Justice.

Witness:
DOMINGO VALDEZ. [RUBRIC.]

Witness:
ALFONSO RAEL DE AGUILAR. [RUBRIC.]

This testimonio agrees with its original from which I, Capt. Antonio de Ulibarri copied it letter by letter, compared, corrected (torn) the instrumental witnesses who saw it taken were Gregorio Garduño and Feliz Sanchez, and that it may at all times so appear, I, said chief alcalde, signed my name to it, acting as special justice, for the notorious lack of any public or royal notary, there being none in these parts, and on this common paper, there being none stamped in these parts. To which I certify, in testimony of the truth, I making my accustomed public rubric.

ANTONIO DE ULIBARRI. [RUBRIC.]

GREGORIO GARDUÑO. [RUBRIC.]
JU. MANUEL CHIRINOS. [RUBRIC.]

* * * * * * *

261 DEFENDANTS' EX. "J"—TRANSLATION.

Suit No. 278—Jose de Leyba grant.

Translation of archive 313.

Know all men who may see this letter and writing of royal sale that I, Juan Rico de Rojas, and Maria Gutierrez, citizen of this town of Santa Fé, state, the two together and each individually *in solidum*, that we sell and give in royal sale and in fact to Captain Juan Garcia de la Rivas, chief constable of the holy office of the inquisition, a piece of cultivable land on the other side of the river of this town, which piece I, the said Maria Gutierrez, had from my mother from those which the King gave to her by grant when we came in for the conquest of this kingdom; and they are distant from this said town about four *arquebus* shots; and the boundaries of said lands are on the south side lands of Felipe Pacheco, and on that of the east lands of the purchaser, and on that of the north an arroyo and some wild gooseberry bushes which also front the said eastern boundary, and that of the west our lands as far as the said lands of Felipe Pacheco, and a pile of stones where we used to have a small house. And we give the said lands to him for the price and sum of twenty-two dollars, which we acknowledge to have received from the aforesaid Captain Juan Garcia de la Rivas to our satisfaction, and if they are or may be worth more we make to him gift and donation perfect and irrevocable * * * and thus they executed it before me Captain Francisco Lorenzo de Casados, *alcalde ordinario* of this said town of Santa Fé; and I said *alcalde ordinario* certify that I know the grantors, and they did not sign on account of not knowing how. The witnesses signed it at their request
262 & 263 with me and my attending witnesses, acting before me as special justice for lack of a public or royal notary.

And there were present as instrumental witnesses the secretary of the common council, Juan Manuel Chirinos and Don Joseph Manuel de Giltomey and Bernardo de Sena, citizens of this said town, where it is done on the tenth day of the month of July of the year one thousand seven hundred and sixteen, and on the present common paper because the stamped paper is not in use in this kingdom.

At the request of Juan Rico de Rojas.
(Signed) JOSEPH MANUEL GILTOMEY. [RUBRIC.]

At the request of Maria Gutierrez.
(Signed) JUAN MANUEL CHIRINOS. [RUBRIC.]

Attending witness:
(Signed) SALVADOR MONTOYA. [RUBRIC.]

Attending witness:
(Signed) ANTONIO DURAN DE ARMIJO. [RUBRIC.]

(Signed) FRANCISCO LORENZO DE CASADOS, [RUBRIC.]
Special Justice.

* * * * * * *

264 DEFENDANTS' EX. "K"—TRANSLATION.

Suit No. 278—Jose de Leyba grant.

Translation of archive 640.

Donation in Favor of Maria de Nava, 1710.

At the town of Santa Fé, the capital of this kingdom and provinces of New Mexico, on the twenty-fifth day of the month of August, of the year one thousand seven hundred and ten, before me Captain Diego Arias de Quiros, ordinary alcalde, appeared Sebastian de Vargas whom I certify I know, and he stated that he made gift and donation, pure, simple and irrevocable, which the law terms *inter vivos*, that is, to wit, to Maria de Nava, a widow, of a piece of cultivated land that will contain one-fourth of a *fanega* of corn-planting land, with also a house lot and garden on the other side of the river of this town, which on one side are bounded by lands of the grantor, of Manuel de Vargas and that San Marcos road, and he gives them to her free of rent charge and the other encumbrance, in order that she may sell them and alienate them it is understood to this grantor and not to another person, and to whom he cedes and conveys the property, right, interest and seigniory which he had in said lands, and he waived all the laws in his favor, in regard to which he will not institute any suit or claim either personally or through his children and heirs, and in case they should bring it against her *he*t them not be heard either in or out of court. And to its guaranty he bound his person and his present and future property. And he empowers His Majesty's judges to the fullest extent to force and compel him to its fulfillment, as though it were by final judgment of a competent judge, pronounced in an adjudicated cause.

Thus he executed and signed it with me, said ordinary
265 alcalde, and the said witnesses, who were Cristobal de Gongora and Antonio Duran de Armijo. And it is on ordinary paper, because stamped paper is not in use in these regions. Done *ut supra*.

Attending witness:
(Signed) CRISTOBAL DE GONGORA. [RUBRIC.]

Attending witness:
(Signed) ANTONIO DURAN DE ARMIJO. [RUBRIC.]

Before me as special justice.
(Signed) DIEGO ARIAS DE QUIROS. [RUBRIC.]

266 DEFENDANTS' EX. "L."

In the United States Court of Private Land Claims, Sitting at Santa Fé, in the Territory of New Mexico, July Term, 1893.

LOUISE J. PURDY ET AL., Plaintiffs,
versus
UNITED STATES OF AMERICA, Defendant. } No. 6.

In the Matter of the SEBASTIAN DE VARGAS Grant, Situate in Santa Fé County, New Mexico.

Decree.

This cause having heretofore come on to be heard upon the pleadings and exhibits on file, and upon the proofs taken, full legal proof having been taken, and counsel James H. Purdy, Esq., for complainants, and M. G. Reynolds, Esq., attorney for the United States, having been heard for the said parties; and the petition in this cause having been sustained by satisfactory proofs; after due deliberation, the court being now sufficiently advised in the premises makes the following findings of facts:

That the grant of land prayed for by the said plaintiffs in their petition was made in fee-simple absolute as early as the year 1728 to Sebastian de Vargas, by the governor and captain general of the province of New Mexico by authority of the King of Spain, in conformity with the laws and regulations in force in said province; and, that in pursuance of said grant, the said grantee, Sebastian de Vargas was placed in formal juridical possession of said land situate in what is now the county of Santa Fé, Territory of New Mexico.

That the said grantee and his legal representatives and assigns complied with all conditions in said grant and held possession of said land from the time of said grant up to and at the time of the cession by treaty of the said Territory of New Mexico by the Republic of Mexico to the United States in the year 1848.

That the plaintiffs herein are the legal representatives
267–271 and assigns of said original grantee, Sebastian de Vargas, and have such claim and interest in said land granted as gives them a right to apply to this court for a confirmation of the same.

And the court further finds the extent and boundaries of said land to be as follows:

On the south, by the old road coming down from the Pecos Pueblo to the Cerrillos; on the north, by the alto of the Arroyo de los Chamisos; on the east, in part by the old road leading from the city of Santa Fé to the Pueblo of Pecos, and in part by the Sierras Negras, also called Cerros Negros, or Black Hills, and the west, by the road leading from the city of Santa Fé to the Pueblo of Galisteo, which road is also called the "Camino de en Medio."

.NT.

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It is therefore ordered, adjudged and decreed by this court, that the said grant of land is a complete and perfect grant, and good and valid claim against the United States; and that the same was a good and valid grant made under and by virtue of the laws and regulations, orders and decrees existing and in force in the province of New Mexico at the date of said grant and delivery of possession to the said grantee Sebastian de Vargas.

And it is ordered, adjudged and decreed that the said land hereinbefore described and set forth, and the title and claim thereto be and the same is hereby confirmed to the legal representatives and assigns of the said Sebastian de Vargas, and to their heirs and assigns forever; provided, however, that this confirmation shall not confer any right or title to any gold, silver or quicksilver mines or minerals of the same.

(Here follows maps marked p. 268.)

272 DEFENDANTS' EX. "N" 1, TRANSLATION.

Title Papers in the San Marcos Pueblo Grant.

To his excellency the governor and captain general:

I, Antonio Urban Montaño, a resident of this village of Santa Fé, appear before your excellency in due form of law and say, sir, that I have registered a tract of land, situate between the point of the Serrilios and the pueblo of Galisteo, which is vacant and unsettled, which was anciently the pueblo of San Marcos, which I have registered for the reason that I have a large family consisting of my wife and children, and also some herds of stock; and not possessing a tract of land on which to pasture said stock, without committing damage, and not having other means of supporting myself, together with my said family, therefore I ask and request your excellency to be pleased to concede to me in grant the said tract of land in the name of the King our lord (whom may God preserve), the boundaries thereof being on the east, the high road leading to the said pueblo of Galisteo, and on the west, by the side of the hills which are between the said point and the arroyo of Lo de Basquez, and on the north a small rocky mountain on the prairie and on the south, the ridge that divides said place from said arroyo of Lo de Basquez, there always remaining free the pastures and waters, as is customary. I only ask for said place in order that I may, in my own right build a house, and as I have already stated, to enable me to graze my herd of sheep and goats, and some cows that God has been pleased to give me. Your excellency, in doing what I have asked, I would receive favor with justice, which I ask, and without any dissimination, and I swear in due form to this document.

(All erasures of no validity.)

FELIPE TAFOYA, *Solicitor.*

273 SANTA FÉ, *June* 15, 1754.

Having taken this document as presented, and in view of the reasons therein set forth, I, Thomas Veles Cachupin, governor of this kingdom of New Mexico, said that in the name of His Majesty (whom may God preserve) the tract of land asked for being public domain and without prejudice to any third party having a better right, do make to him said grant, but not with the limits he asks for and designates, but those designated by law of thirty-three cordels of fifty varas in each direction, measuring from the center where he may build his house and corrals, with the understanding that he shall not damage it with his herd, the commons and pastures of the horses of this royal garrison, nor the pasturage of the herds kept for the support and supply of the soldiers of the royal garrison, which are pastured and kept at those places, should he do so, this grant shall be of no validity, and cannot be of any force or effect, and he may be ejected therefrom. And I entrust the proceedings of possession and measurement, as provided, to the lieu-

tenant, chief alcalde of this village, Bartolome Fernandez, which proceedings he will place in continuance of this decree of grant, and when he shall have concluded the same he will return them to this government in order that the party may be supplied with the certificate of all, and which will serve him as a title in due form. Thus I provided and signed, acting with the attending witnesses, to which I certify.

TOMAS VALEZ CACHUPIN.

TOMAS DE ALVEAR Y CALLADO.
MIGUEL DE ALIRE.

On the 26th day of the month of July, in the year one thousand seven hundred and fifty-four, I, Lieutenant Bartolome Fernandez, in compliance with the order of His Excellency, the gov-
274 ernor, Tomas Velez Cachupin, proceeded to the place of San Marcos, together with two witnesses, who were Miguel Thenorio de Alba and Manuel Thenorio de Alba, as also the applicant, Antonio Urbano Montano, to place him in possession of said tract of land in conformity with the grant made by His Majesty (whom may God preserve) the King our lord, Fernando Sixth, to the said Antonio Urbano Montaño, whom I took by the hand and conducted him over said tract of land. He pulled up grass, threw stones, and shouted, "Long live the King our lord," he taking possession of said lands without contradiction of any third party having a better right thereto, peaceably and quietly, as in such cases are required, designating to him the boundaries which are, on the east, two cedar trees; on the west, a small mountain called Chalchiguite, and on the south, a large cottonwood tree near the road, and on the north, some red rocks in the arroyo. And in perpetual testimony thereof, I sign this, acting by appointment, with my attending witnesses, and on the present paper for the reason that there is no sealed paper in these parts; to which I certify.

BARTOLOME F'R'Z,
Judge by Appointment.

Witness:
MIGUEL THENORIO DE ALBA.

Witness:
MANUEL THENORIO DE ALBA.

The foregoing is a correct translation taken from the original in Spanish, to the best of my knowledge and belief.

SAM'L ELLISON.

Sworn to and subscribed to before me this 26th February, 1873.

JAMES K. PROUDFIT,
Surveyor General.

275 DEFENDANTS' EX. "O."

UNITED STATES OF AMERICA, *ss:*

Petition in Case No. 78, Los Cerrillos Grant.

In the Court of Private Land Claims, Sitting in the Territory of New Mexico, at the City of Santa Fé.

BEATRIZ PEREA DE ARMIJO
vs.
UNITED STATES.

To the honorable chief justice and associate justices of the Court of Private Land Claims:

Your petitioner, Beatriz Perea de Armijo, a resident of the county of Bernalillo, in the Territory of New Mexico, respectfully shows to the court:

1. In the year 1788 Jose Miguel de la Pena presented a petition to Fernando de la Concha, then civil and military governor of the province of New Mexico, setting forth that he had registered a piece of land situate in the place called Los Cerrillos, which belonged to Alonzo Rael de Aguilar, the grandfather of his wife, Maria Rael, and that it had been abandoned for many years and that said Alonzo had lost the right which he had had, and the said Pena therefore asked of the governor that said land be given to him for himself, his children and heirs. On the 20th of April, 1788, the said governor certified that he had visited the tract of land and placed the petitioner and other heirs of Alonzo Rael de Aguilar in possession thereof and directed that the proper documents should be made in his favor by the chief alcalde of Santa Fé, Antonio Jose Ortiz. On the 12th day of June, 1788, Antonio Jose Ortiz, chief alcalde of Santa Fé, in obedience to the order aforesaid of the governor, proceeded to the land in question and notwithstanding that the petitioner had been placed in possession by the
276 governor, he proceeded to deliver formal juridical possession of the land to the said Jose Miguel de la Pena, and designated the boundaries of the tract, which were, on the north, the boundaries of the Canada de Guicu and lands of the Bacas; on the south, the high hills; on the east, the road which goes to Galisteo, and declared that said tract measured from east to west, 2500 varas, and was divided in three parts, one of which was assigned to the said Jose Miguel de la Pena on the western side, adjoining the lands of Cleto Miera, and on the east adjoining the lands of the heirs of Antonia Teresa Rael de Aguilar; all of which proceedings by said alcalde appear in the act of juridical possession, duly signed by him. The said petition of Jose Miguel de la Pena, the certificate of the governor and the act of juridical possession are on file in the office of the surveyor general of New Mexico, reported No. 59 but copies and translations thereof in duplicate are filed herewith and are hereby made a part of this petition.

2. The lands embraced within the boundaries hereinbefore referred to, have been, as your petitioner is informed and believes in the possession of the heirs and legal representatives of the — Jose Miguel de la Pena from the time of the making of the said grant in 1788, down to the present time, and there are no persons now in possession of the same or any part thereof, otherwise than by the lease or permission of your petitioner, but your petitioner is informed and believes that John Gwyn and Robert B. Willison, both residents of said county of Santa Fé in the Territory of New Mexico make claim to a part of said land. It appears from the records of the office of the surveyor general that said Gwyn and Willison were making said claim more than twenty years ago, but they have not been in possession of any portion of said land under
277-281 said claim, and your petitioner charges that if they ever had any right to any portion of said land, which he denies, it has been forever lost and barred by the operation of the statutes of limitations.

3. A claim for said grant was submitted to the surveyor general for New Mexico in the year 1871, and that officer on the 31st of January, 1872, made his report thereon, and recommended the same to Congress for confirmation, but the said claim has never been acted upon by Congress.

4. The said land is situate in the county of Santa Fé and its boundaries are as set forth in the first paragraph of this petition. The *the* quantity of land contained therein according to a survey thereof made under the direction of the surveyor general for New Mexico is 2284.41 acres, and a map thereof showing the same, is filed herewith in accordance with the requirements of the statute.

5. This petitioner avers that the title to said land hereinbefore set out was complete and perfect at the date when the United States acquired sovereignty over the country embraced within the present Territory of New Mexico, and that she is the legal successor in interest in part of the rights of the original grantee.

Your petitioner therefore prays that the validity of such title and claim may be inquired into and decided by this court in accordance with the provisions of the statute of the United States.

BEATRIZ PEREA DE ARMIJO,
Petitioner.

F. W. CLANCY,
Solicitor for Petitioner.

282 DEFENDANTS' EX. "P" 1.

Translation title papers in case 78.

[SEAL.] Six reals; second seal; six reals; years, seventeen hundred and eighty-eight and eighty-nine.

His excellency the governor and captain general:

I, Jose Miguel de la Pena, a resident of the city of Santa Fé, appear before Your Excellency in due legal form, and represent:

Sir, I have registered a piece of land situate in the place called Los Cerrillos, which said place or tract belonged, when this province was recently conquered, to Alonzo Rael de Aguilar, my wife Maria Rael's grandfather, and it having been abandoned for so many years, and said Don Alonzo having lost the right he had to it; now, sir, I ask Your Excellency for the same, in the name of His Majesty, with all its entrances and exits, pastures and watering places, uses and customs, for me, my children, heirs, or the person or persons to me useful and of my will, to enable to plant and also to keep what animals God may be pleased to give me, and I promise to settle said tract according to His Majesty's will and to what he commends in his royal ordinances. Wherefore, and in consideration of all else in my favor, I ask and pray Your Excellency, with the utmost submission, that you be pleased to hear me and grant to me in the name of His Majesty what I hope to obtain through your great righteousness, and your exact and sure distribution of justice, so that through this you may provide as to Your Excellency may seem proper. I implore Your Excellency's royal aid, and declare in due form that this my petition is not made in dissimulation, and as may be necessary, etc.

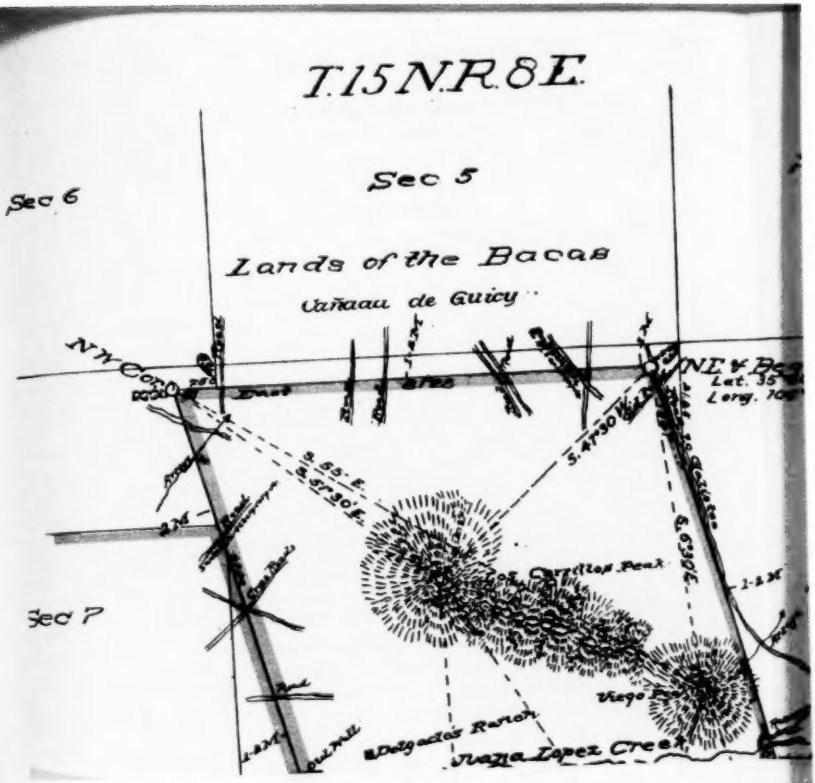
JOSE MIGUEL DE LA PENA.

SANTA FÉ, 20*th April*, 1788.

Finding expedient the cultivation of the land referred to in this petition, I visited the tract cited, and placed the petitioner and
283 other heirs of Alonzo Rael de Aguilar in possession thereof, and that it may be known in all time the proper documents will be duly made in his favor, by the chief alcalde of this city, Jose Antonio Ortiz.

CONCHA.

In this city of Santa Fé, on the 12th day of the month of June, of this year seventeen hundred and eighty-eight, I, captain of militia and chief alcalde of this city, in virtue of the preceding order and decree of His Excellency, Fernando de la Concha lieutenant colonel and civil and military governor of this province, proceeded to the place and location commonly called Los Serrillos, and notwithstanding that the petitioner had been placed in possession by said lieutenant colonel, I took by the hand the said Jose Miguel de la Pena and led him over the tract. He plucked up grass, cast stones and shouted saying "Live our lord, the King, whom may God preserve," taking quiet and peaceable possession of the said lands without any objection, I designating the boundaries, which are on the north, the boundaries of the Cañada del Guycu and lands of the Bacas, on the south, the high hills, on the east the road which leads to Galisteo, and said tract embraces by measurement from east to west 2,500 varas; and the said tract being divided in three parts, to the said Miguel de la Pena were assigned 833 varas, on the western side adjoining the lands of Cleto Miera, and on the east adjoining lands of the heirs of Antonio Teresa Rael de Aguilar, and on the other side the same boundaries as are stated in the preceding grant, I notify-



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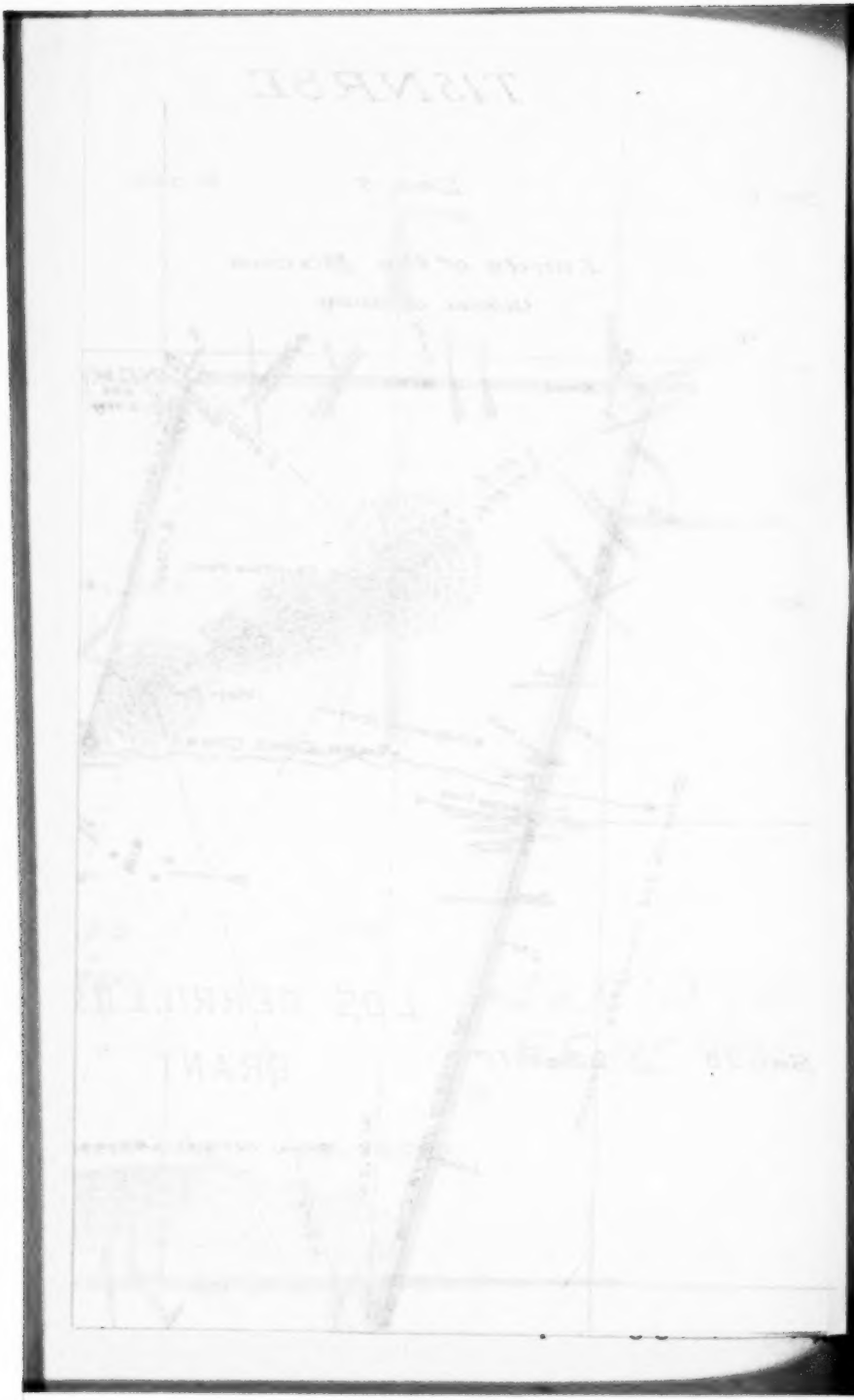

ing him that the pastures and watering places are common. And that it may so appear in all time, I signed this as special justice, with my two attending witnesses, on account of the notorious lack of
a public and royal notary, there being none of any kind in
284 this province; to all of which I certify.

ANTONIO JOSE ORTIZ.

ANTO. JOSE ORTIZ.
JOSE MIGUEL ORTIZ.

In this city of Santa Fé on the 18th day of the month of February of the year seventeen hundred and ninety-one, before me Antonio Jose Ortiz, captain of militia and chief alcalde of this said city, appeared the above-mentioned Jose Miguel de la Pena, in whose favor the two documents that appear were executed, and declared that, with the consent of his children and of his wife, he would convey and did convey, to Cleto de Miera y Pacheco, the right, title and domicile which he had acquired to the tract called Los Serrillos, as appears by the above documents executed in his favor, which he declared he conveyed with all the title necessary to the said Cleto Miera, the latter having paid him $450 in the currency of the country, which money the said Jose Miguel de la Pena declared he had received to his satisfaction and content, with which amount he acknowledged himself satisfied, content and paid; and if in the future it should become of greater value, he gives and donates the whole, pure, entire, perfect, and irrevocable, termed in law *inter vivos*, and that he may control and use the same at his pleasure; and he the said Pena, declared that he renounces all and every of the laws, requirements and circumstances which provide in his favor, and he requested me, that as chief alcalde, I interpose my sanction and judicial decree, and I, said chief alcalde, declared that I would, and I do interpose the same as fully as I am authorized by law; and that it may so appear, the said Pena signed with me; to all of which I certify.

ANTONIO JOSE ORTIZ.
JOSE MIGUEL DE LA PENA.

(Here follows map marked p. 285.)

286 DEFENDANTS' EX. "R."

Field-notes of the Survey of the Los Cerrillos Grant.

In compliance with the foregoing instructions I proceeded with the two witnesses, Nasario Gonzalez and Francisco Romero, who point out to me the places named in the instructions as the beginning point of this survey, to wit: "the road which goes to Galisteo and south limits of the lands of the Bacas and Cañada de Guicu," at point where the road to Galisteo intersects the south line of the lands of the Bacas and Cañada de Guicu and on west side of said road. I establish the northeast and beginning corner of the Los Cerrillos grant.

* * * * * * *

Survey commenced June 26, 1896, and executed with a Young & Sons' light mountain transit with solar attachment.

* * * * * * * *

From northeast corner just established and described by me, I run along west side of "the road which goes to Galisteo" on east boundary of the Los Cerrillos grant,

S. 15° 30′ E.

Chs.	Lks.	
		on 1st mile over rolling prairie.
3	44	Old road bears N. E. and S. W.
18	27	Intersect N. and S. line between secs. 8 and 9, T. 15 N., R. 8 E., 21.25 chs. S. of cor. to secs. 4, 5, 8 and 9 previously described. Set a basalt stone 26 x 14 x 5 ins. 19½ ins., in the ground for a closing cor. marked L. C. on W. and P. L.—C. C. on E. sides. Dug pits 36 x 36 x 12 ins. on line N. and S. of stone 8 ft. dist. and raised a mound of earth 5 ft. base, 2½ ft. high W. of cor.
40	00	Set a basalt stone 20 x 15 x 6 ins., 15 ins. in the ground for ¼-mile cor. marked $\frac{\text{L. C.}}{\frac{1}{4}\text{ M.}}$ on side facing grant. Dug pits 36 x 36 x 12 ins. on line N. and S. of stone 8 ft. dist. and raised a mound of earth 5 ft. base, 2½ ft. high W. of the cor.
52	00	Arroyo 10 lks. wide, course N. E.
56	00	Along E. foot of Viejo peak.
65	79	To reservoir on Juana Lopez creek, bears E. and W., 110 lks. wide. Dam bears W. 2 chs. dist.
70	98	Wire fence bears E. and W.
79	14	Wire fence bears N. E. and S. W.
80	00	Set a basalt stone 21 x 14 x 7 ins., 18 ins. in the ground, for 1 mile cor. marked $\frac{\text{L. C.}}{\text{1 M.}}$ facing the grant. Dug pits 36 x 36 x 12 ins. on line N. and S. of stone 8 ft. dist. and raised a mound of earth 5 ft. base, 2½ ft. high W. of the cor.

1-mile cor. on Los Cerrillos tract (preliminary survey) bears N. 72° 30′ E., 8.95 chs. dist.

Cross on church in the village of Bonanza bears S. 60° W. about 15 chs. dist.

Land rolling. Soil sandy, stony, 2nd and 3rd rate. No timber.

287 S. 15° 30′ E.

On 2nd mile over rolling land

0 91 Intersect E. and W. line bet. secs. 9 and 16, T. 15 N., R. 8 E., 22.20 chs. W. of ¼ sec. cor., which is a basalt stone 12 x 8 x 5 ins. in a mound of stone properly marked. Set a basalt stone 19 x 17 x 7 ins., 14½ ins. in the ground for closing cor. marked L. C. on W. and C. C. P. L. on E. sides. Dug pits 36 x 36 x 12 ins. on line N. and S. of stone 8 ft. dist. and raised mound of earth 5 ft. base, 2½ ft. high, W. of the cor.

8 36 Galisteo road bears to the east.

9 30 Road to Bonanza bears E. and W.

25 80 Arroyo 90 links wide, course W.

40 00 Set a basalt stone 20 x 13 x 8 ins., 15 ins. in the ground for ½-mile cor. marked $\frac{\text{L. C.}}{\frac{1}{2}\text{ M.}}$ on side facing the grant.

Dug pits 36 x 36 x 12 ins. on line N. and S. of stone 8 ft. dist. and raised a mound of earth 5 ft. base, 2½ ft. high W. of cor.

75 80 Road bears E. and W.

80 00 Set a limestone 20 x 14 x 5 ins., 15 ins. in the ground for 2-mile cor. marked $\frac{\text{L. C.}}{\text{2 M.}}$ on side facing the grant. Dug pits 36 x 36 x 12 ins. on line N. and S. of stone 8 ft dist. and raised a mound of earth 5 ft. base, 2½ ft. high W. of the cor.

2-mile cor. on E. line of Los Cerrillos (preliminary survey) tract bears N. 69° 30′ E., 21.10 chs. dist.

Land rolling, soil sandy, 3rd rate. No timber.

S. 15° 30′ E.

On 3rd mile over rolling land.

1 15 Intersect E. and W. line bet. secs. 16 and 21, 2.50 chs. E. of ¼ sec. cor. which is a granite stone 11 x 5 x 3 ins. in ground properly marked.

Set a basalt stone 18 x 16 x 7 ins., 12 ins. in the ground for closing cor. marked L. C. on W. and C. C. P. L. on E. sides. Dug pits 36 x 36 x 12 ins. on line N. and S. of stone 8 ft. dist. and raised a mound of earth 5 ft. base, 2½ ft. high W. of the cor.

18 70 Road bears E. and W.

21 00 To north foot of the "high hills," the south boundary call of this grant, the same being pointed out to me by the witnesses, Nasario Gonzalez and Francisco Romero.

Establish southeast cor. of the grant at this point.

Set a basalt stone 22 x 14 x 8 ins., 16½ ins. in the ground for southeast cor. of the Los Cerrillos grant, marked

$\frac{\text{L. C.}}{\text{S. E. cor.}}$ on N. W. side. Dug pits 36 x 36 x 12 ins. on line N. and W. of stone 8 ft. dist. and raised a mound of earth 5 ft. base, 2½ ft. high W. of the cor.

Top of Turquoise hill bears S. 20° E. about 20 chs. dist.

Viejo peak bears N. 18° W.

Los Cerrillos peak bears N. 31½° W.

288 S. E. cor. of the Los Cerrillos tract (preliminary survey) bears S. 49° E., 45.68 chs. dist.

Land rolling, soil sandy, stony, 2nd and 3rd rate. No timber.

Los Cerrillos Grant, South Boundary.

Along foot of "high hills," as already described as south boundary call of the Los Cerrillos grant.

West

on 1st mile over rolling land.

23 00 Arroyo 20 lks. wide, course N.

37 00 Road bears N. and S.

40 00 Set a basalt stone 24 x 13 x 6 ins., 18 ins. in the ground for ½-mile cor. marked $\frac{\text{L. C.}}{\frac{1}{2}\text{ M.}}$ on side facing the grant. Dug pits 36 x 36 x 12 ins. on line E. and W. of stone 8 ft. dist. and raised a mound of earth 5 ft. base, 2½ ft. high, N. of the cor.

41 76 Road bears N. W. and S. E.

46 92 Intersect N. and S. line bet. secs. 20 and 21, T. 15 N., R. 8 E., 23.87 chs. N. of ¼-sec. cor., which is a quartz stone in mound of stone properly marked. Set a basalt stone 24 x 11 x 5 ins., 18 ins. in ground for closing cor. marked L. C. on N. and C. C. P. L. on S. sides. Dug pits 36 x 36 x 12 ins. on line E. and W. of stone 8 ft. dist. and raised a mound of earth 5 ft. base 2½ ft. high N. of the cor.

76 78 Road bears N. and S.

78 30 Road bears S. W. and N. E.

80 00 Set a basalt stone 28 x 13 x 4 ins., 21 ins. in the ground for 1-mile cor. marked $\frac{\text{L. C.}}{\text{1 M.}}$ on side facing the grant. Dug pits 36 x 36 x 12 ins. on line E. and W. of stone 8 ft. dist. and raised a mound of earth 5 ft. base, 2½ ft. high N. of the cor.

1-mile cor. on Los Cerrillos tract (preliminary survey) S. line bears S. 48° 30′ E., 44.30 chs.

Land rolling, soil sandy, stony, 3rd rate. Timber a few scattering cedar brush.

West

on 2nd mile over level land.

1 63 To point where the lands of Cleto de Miera and Pedro Bautista Pino begins as pointed out by the witnesses. Therefore, at this point I establish the S. W. cor. of this grant. Set a basalt stone 18 x 18 x 16 ins., 12 ins. in the ground for S. W. cor. of the Los Cerrillos grant, marked $\frac{\text{L. C.}}{\text{S. W. cor.}}$ on N. E. face. Dug pits 36 x 36 x 12 ins. on line E. and N. of stone 8 ft. dist. and raised a mound of earth 5 ft. base, 2½ ft. high N. of the cor.

Mouth of tunnel bears S. 31° W., about 35 chs.

Viejo peak bears N. 2° E.

289 Smelter bears S. 23° W.

Los Cerrillos peak bears N. 2° 30′ W.

Land level. Soil sandy, 3rd rate. No timber.

June 27th, 1896.

Los Cerrillos Grant, West Boundary.

Thence along the east line of the lands of Miera and Pino already described as being the west boundary call of the Los Cerrillos grant, I run

N. 15° 30′ W.

on 1st mile on west boundary over rolling land.

18 19 Intersect E. and W. line bet. secs. 17 and 20, T. 15 N., R. 8 E., 7.25 chs. E. of ¼-sec. cor. which is a granite stone 15 x 8 x 5 ins. in a mound of stone properly marked.

Set a granite stone 20 x 15 x 5 ins., 15 ins. in the ground for closing cor. marked L. C. on E. and C. C. S. L. C. on W. sides. Dug pits 36 x 36 x 12 ins. on line N. and S. of stone 8 ft. dist. and raised a mound of earth 5 ft. base, 2½ ft. high E. of the cor. This ¼-sec. cor. is evidently misplaced, being 10 chs. too far west.

40 00 Set a granite stone 20 x 18 x 12 ins. 15 ins. in the ground for ½-mile cor. marked $\frac{\text{L. C.}}{\frac{1}{2}\text{ M.}}$ on side facing grant. Dug pits 36 x 36 x 12 ins. on line N. and S. of stone 8 ft. dist. and raised a mound of earth 5 ft. base, 2½ ft. high E. of cor.

80 00 Set a conglomerate stone 22 x 15 x 7 ins. 16½ ins. in the ground for 1-mile cor. marked $\frac{\text{L. C.}}{\text{1 M.}}$ on side facing the grant. Dug pits 36 x 36 x 12 ins. on line N. and S. of stone 8 ft. dist. and raised a mound of earth 5 ft. base, 2½ ft. high E. of the cor.

Land rolling. Soil sandy, 3rd rate. Timber, cedar brush scattering.

N. 15° 30′ W.

on 2nd mile over rolling land.

6 50 Road bears E. and W.

18 50 Road bears E. and W.

21	50	Old acequia bears E. and W. and enter valley of the Juana Lopez bears E. and W. Intersect E. and W. line bet. secs. 8 and 17, T. 15 N., R. 8 E., 13.13 chs. E. of cor. to secs. 7, 8, 17 and 18, which is a basalt stone 14 x 10 x 7 ins. in a mound of stone properly marked. Set a basalt stone 21 x 16 x 6 ins., 15¾ ins. in the ground for closing cor. marked L. C. on E. and C. C. S. L. C. on W. sides. Dug pits 36 x 36 x 12 ins. on line N. and S. of stone 8 ft. dist. and raised a mound of earth 5 ft. base, 2½ ft. high E. of cor.
22	00	Spring creek, 10 lks. wide, course W.
23	00	Spring creek 5 lks. wide, course W.
27	00	Juana Lopez creek, 25 lks. wide, course W.
290		
30	00	Trail bears E. and W. and leave valley bears E. and W.
32	72	Old wall bears E. and W.
34	00	Old Delgado ranch bears E. about 12 chs. dist.
40	00	Set a basaltic stone 18 x 18 x 8 ins., 12 ins. in the ground for ¼-mile cor. marked $\frac{\text{L. C.}}{\frac{1}{4}\text{ M.}}$ on side facing grant. Dug pits 36 x 36 x 18 ins. on line N. and S. of stone 8 ft. dist. and raised a mound of earth 5 ft. base 2½ ft. high, E. of the cor. 2-mile cor. on Los Cerrillos tract (preliminary survey) bears N. 83° W. 23.80 chs.
46	50	Road bears E. and W.
62	30	Cross-roads bears N. E. and S. W. and N. W. and S. E.
69	94	Intersect N. and S. line bet. secs. 7 and 8, T. 15 N., R. 8 E., 10.34 chs. N. of ¼-sec. cor., which is a basalt stone 12 x 8 x 3 ins. in ground properly marked. Set a basalt stone 17 x 60 x 10 ins., 11⅝ ins. in the ground for closing cor. marked L. C. on E. and C. C. S. L. C. on W. sides. Dug pits 36 x 36 x 12 ins. on line N. and S. of stone 8 ft. dist. and raised a mound of earth 5 ft. base, 2½ ft. high E. of the cor.
75	06	Santa Fé and Albuquerque road (old stage road) bears N. E. and S. W.
80	00	Set a basalt stone 18 x 18 x 15 ins., 12 ins. in the ground for 2-mile cor. marked $\frac{\text{L. C.}}{\text{2 M.}}$ on side facing the grant. Dug pits 36 x 36 x 12 ins. on line N. and S. of stone 8 ft. dist. and raised a mound of earth 5 ft. base, 2½ ft. high E. of the cor. Land rolling. Soil sandy, 1st and 2nd rate. No timber. N. 15° 30′ W. on 3rd mile over rolling land,
9	40	Arroyo 20 lks. wide, course N. W.
15	07	Road bears N. E. and S. W.

20 00 Ascend hill, bears E. and W.
20 60 Top and descend
21 12 To south line of the lands of the Bacas and Cañada de Guicu, as pointed out to me by the witnesses Nasario Gonzalez and Francisco Romero, the same being the north boundary call of the Los Cerrillos grant.

Therefore, at this point I establish the northwest corner of the Los Cerrillos grant.

Set a granite stone 14 x 14 x 10 ins., 10½ ins. in the ground for N. W. corner marked $\frac{\text{L. C.}}{\text{N. W. cor.}}$ on S. E. side. Dug pits 36 x 36 x 12 ins. on line S. and E. of stone 8 ft. dist. and raised a mound of earth 5 ft. base, 2½ ft. high, S. E. of the cor.

N. W. cor. of Los Cerrillos tract (preliminary survey) bears N. 88° 30′ W., 29.60 chs. dist.

Los Cerrillos peak bears S. 51° 30′ E.

Viejo peak bears S. 55° E.

Land rolling. Soil sandy, 3rd rate. No timber.

291 *Los Cerrillos Grant, North Boundary.*

Thence along the south line of the lands of the Bacas and the north boundary line of the Los Cerrillos grant.

East

on 1st mile over rolling land.

7 50 Intersect N. and S. line bet. secs. 7 and 8, T. 15 N., R. 8 E., 4.36 chs. S. of cor. to secs. 5, 6, 7 and 8, which is a granite stone 14 x 5 x 2 ins. in a mound of stone properly marked.

Set a granite boulder 15 x 12 x 10 ins., 10 ins. in the ground for closing cor. marked L. C. on S. and P. L. C. C. on N. sides. Dug pits 36 x 36 x 12 ins. on line E. & W. of stone 8 ft. dist. and raised a mound of earth 5 ft. base, 2½ ft. high S. of the cor.

8 31 Road bears N. and S.
30 60 Road bears N. and S.
36 25 Road bears N. and S.
40 00 Set a conglomerate stone 14 x 13 x 10 ins., 10½ ins. in the ground for ½-mile cor. marked $\frac{\text{L. C.}}{\frac{1}{2}\text{ M.}}$ on side facing the grant. Dug pits 36 x 36 x 12 ins. on line E. and W. of stone 8 ft. dist. and raised a mound of earth 5 ft. base, 2½ ft. high S. of the cor.
50 00 1-mile cor. on the Los Cerrillos tract (preliminary survey) N. line bears N. 65 lks. dist.
54 60 Road bears N. W. and S. E.
56 26 Road bears N. E. and S. W.
69 93 Road Santa Fé to Albuquerque bears N. W. and S. E.
70 50 Road bears N. and S.
80 00 Set a limestone 25 x 18 x 4 ins., 18¾ ins. in the ground

for 1-mile cor. marked $\frac{\text{L. C.}}{\text{1 M.}}$ on side facing grant. Dug pits 36 x 36 x 12 ins. on line E. and W. of stone 8 ft. dist. and raised a mound of earth 5 ft. base, 2½ ft. high S. of cor.

Land rolling. Soil sandy, stony, 3rd rate. No timber.

East

on 2nd mile over rolling land.

1 72 The northeast corner of the Los Cerrillos grant, and place of beginning.

Land rolling. Soil sandy, 3rd rate. No timber.

June 28th, 1896.

292 DEFENDANTS' EX. "S."

In the Court of Private Land Claims, Sitting at Santa Fé, New Mexico.

BEATRIZ PEREA DE ARMIJO
vs.
UNITED STATES. } No. 78.

Final Decree.

This cause having heretofore come to be heard upon the pleadings and exhibits on file, and upon the proofs taken, full legal proofs having been taken, and counsel having been heard for said parties, and the petition in this cause having been sustained by satisfactory proofs after due deliberation, the court being now sufficiently advised in the premises, makes the following findings of fact:

1. In the year 1788, Jose Miguel de la Pena presented a petition to Fernando de la Concha, then civil and military governor of the province of New Mexico, setting forth that he had registered a piece of land situate in the place called Los Cerrillos, which had belonged to Alonzo Rael de Aguilar, the grandfather of his wife, Maria Rael, and that it had been abandoned for many years, and that said Alonzo had lost the right which he had had, and that said Pena therefore asked of the governor that said land be given to him for himself, his children and heirs. On the 20th of April, 1788, the said governor visited the said tract of land and placed the petitioner and other heirs of Alonzo Rael de Aguilar in possession thereof.

2. That said land has been in the continuous and undisputed possession of the heirs of said Alonzo Rael de Aguilar and their legal representatives from the time of the delivery of possession thereof by the said governor, as aforesaid, in the year 1788, down to the present time.

3. The petitioner is the legal successor in interest in part to the rights of the said heirs of the said Alonzo Rael de Aguilar.

293 The court finds, as a matter of law, that the petitioner is entitled to a confirmation of the claim set up in her petition

for the said land to the heirs and legal representatives of the said Alonzo Rael de Aguilar.

The court hereby specifies that the said land is located in the county of Santa Fé and Territory of New Mexico, and is commonly called the Cerrillos grant, and is bounded on the north by the boundaries of the Canada del Guicu and lands of the Bacas; on the south, by the high hills; on the east, by the road which goes to Galisteo, and on the west, by the lands of the grant to Cleto de Miera and Pedro Bautista Pino; that said land measures from east to west twenty-five hundred varas.

It is therefore ordered, adjudged and decreed by the court that the claim of the petitioner for the land hereinbefore described and set forth be and the same is hereby confirmed to the heirs and legal representatives of Alonzo Rael de Aguilar; provided, however, as to any part thereof which may have been sold or granted by the United States to any other person, that such title from the United States to such other person shall remain valid, notwithstanding this decree, and leave is hereby given to said petitioner hereafter to present her claim to this court and make proof thereof as to the value of any such lands so sold or granted by the United States; and provided, further, that this confirmation shall not confer any right or title to any gold, silver or quicksilver mines or mineral of the same.

JOSEPH R. REED,
Chief Justice.

294 DEFENDANTS' EX. "T."

In the District Court, Santa Fè County, December Term, 1897.

MARIANO F. SENA
vs.
J. P. MCNULTY.

TERRITORY OF NEW MEXICO, *County of Santa Fé,* } ss:

Mariano F. Sena, being sworn on his oath says, that he is the plaintiff in the above-entitled cause, and that he cannot safely go into trial in said cause for the following reasons: He claims title to the land described in the declaration by virtue of purchases made by him from heirs of Jose de Leyba to whom the said land was granted by the Spanish authorities in the year 1728; that one of said heirs from whom said purchases have been made, Maria Antonio Leyba de Ramirez, gave affiant definite information as to her direct lineal descent from said Jose de Leyba, who was her great-great-grandfather; that she informed affiant that she was the daughter of Josefa Leyba, who was the child of Salvador Leyba, who was the son of Simon Leyba, who was the son of the original grantee; that affiant expected to have the evidence of said Maria Antonio Leyba de Ramirez to prove her descent aforesaid and that of her cousin Salvador Leyba, from whom he also purchased, from said original grantee, but since the last term of this court, and in October last, she has died, and since then he has as yet, been unable

to find another witness who can testify to the same facts; that he has made diligent efforts to obtain information as to said Leyba family and to procure other witnesses; that he has within the last week, for the first time obtained some clues to other descendants of Jose de Leyba and has learned of very old people who can probably give the needed evidence; that this information is thus far not so definite or certain that he can swear to what he can prove by witnesses or who the witnesses
295 are; that it will be impossible for him to follow up the clues which he now has and obtain the needed evidence before the termination of this term of court; that he will be compelled for that purpose to make journeys to several different places situated away from the railroad, and at distances more than one hundred miles from Santa Fé; that if this case can be continued until the next term of this court he can fully investigate these sources of information and be prepared for trial. But if no continuance can be had he will be compelled, according to his present information to dismiss his case and immediately begin another; that this application for continuance has not been made sooner because he was informed by his attorney up to Monday last there was a possibility of making an agreement with the defense as to the facts, so that a trial might be had, but on Monday he was informed for the first time that there was no chance of this, and it has been impossible, owing to other engagements of his attorney, sooner to prepare this affidavit since last Monday.

MARIANO F. SENA.

Subscribed in my presence and sworn to before me this 30th day of December, A. D. 1897.

[SEAL.] ATANASIO ROMERO,
Probate Clerk.

(Endorsement:) 3810—District court, Santa Fé county.—Sena vs. McNulty. Affidavit for continuance.—Filed in my office Dec. 30, 1897. C. H. Gildersleeve. Case 278—Defendants' Ex. —.

296 DEFENDANTS' EX. "U."

Suit No. 278.—Jose De Leyba grant.

Translation of extract from leaf 8 of the book of Cabildo, in the surveyor general's office, Santa Fé, New Mexico.

On the 26th of November of the year 1713, Captain Juan Garcia de las Rivas presented a grant for three *fanegas de sembradura de maiz* on the other side of the river of this town, which, on the thirty-first day of the month of January of the year 1702, was made to Captain Miguel Garcia, his father, by Castellan Don Pedro Cubero, countersigned by Don Pedro de Morales, the boundaries of which appear in said grant; and the possession, which, on the third of February of said year the chief constable, Antonio de Ysasi, gave to him, the original of which was returned to him.

297 DEFENDANTS' EX. "V."

Testimony of Jose Agustin Ramirez before Samuel Ellison, special commissioner, in the case of The United States of America *vs.* San Pedro and Canon del Agua Company, district court, Santa Fé county, New Mexico, given on the 21st day of April, 1883.

JOSE AGUSTIN RAMIREZ, being first duly sworn on behalf of the defendant herein, on his direct examination by counsel for defendant testified as follows:

Q. Give us your name, age and residence?

A. My name is Jose Agustin Ramirez, I was born in the year 1845, I am now 37 years old, I live in Golden.

Q. What relation, if any, was Jose Serafin Ramirez to you?

A. Serafin Ramirez was my father.

Q. How much of your life have you spent in and about Golden?

A. I have been at Golden for about ten years.

Q. Did you live at San Pedro at one time with your father?

A. Yes, sir; until I married.

Q. Are you well acquainted with the place known as the New Placers, and with the different points in the vicinity of the New Placers?

A. Yes, sir; all.

Q. What name did the place now known as Golden go by formerly?

A. The Real de San Francisco.

Q. Do you know anything of your father having a grant of land close to San Francisco?

A. Yes, sir.

Q. What was it called?

A. It was called the San Pedro and Cañon del Agua grant.

Q. Were they two separate grants?

A. They were two, one was San Pedro and the other the Cañon del Agua grant.

298 Q. How long have you known your father to claim the grant known as the Cañon del Agua grant?

A. About 25 years.

Q. Is that as far back as you can remember?

A. Yes, sir.

Q. Do you know whether he claimed, in connection with this grant, any mine?

A. Yes, sir.

Q. What is that mine now known as? By what name?

A. The copper mine of San Pedro.

Q. Where is it situated?

A. It is in front of the Sierra del Tuerto, on the side of it.

Q. On which side?

A. On the eastern side.

Q. Is the mine on the eastern slope of the mountain, or on the western slope?

A. It is on the east.

Q. In what mountain do you say that it is situated?

A. It is in the Sierra del Tuerto. It is called the Sierrita del Tuorto.

Q. Is there any other mountain in that vicinity called the Sierrita del Tuerto besides this one?

A. There is a mountain near there of the Old Placers called the San Lazaro mountain.

Q. But the question is, is there any other called the Sierrita del Tuerto?

A. No, sir; that is the only one.

299 Q. Is this the mountain sometimes called the San Francisco mountain?

A. Yes, sir.

Q. Do you know what boundaries your father claimed for that grant?

A. Yes, sir.

Q. What were they?

A. On the eastern side, the highest point of the mountain of the Oroque.

Q. And upon the west?

A. And on the west, the old road leading to San Pedro where the Chimal creek empties into the San Pedro creek.

Q. What is on the south?

A. On the south, the Laguna de los Indios.

Q. Do you know what was the northern boundary; what he claimed as the northern boundary?

A. Yes sir.

Q. What is it?

A. The Tuerto mountain.

Q. Were you about the time that your father sold this property?

A. I was living with him.

Q. Do you know whether that property was surveyed or not?

A. Yes, sir.

Q. About what time?

A. In 1866.

Q. Were you there when the property was surveyed?

A. Yes, sir.

Q. Do you know whether the testimony of any witnesses was taken at that time to ascertain the boundaries?

A. Yes, sir.

300 Q. Give the names of such persons as you may have seen there who testified?

A. Juan Anaya, Martin Espinosa, Antonio Gutierrez, Ventura Chavez, Guadalupe Chavez; they are the only ones that I know that were present—and also Leandro Anaya.

Q. Do you remember whether the testimony was all taken at one place, or whether it was taken at different places?

A. It was taken at the same place.

Q. Are you certain of that?

A. Yes, sir.

Q. Do you remember at what time in the year it was taken.
A. It was taken in 1866.
Q. What month do you remember?
A. In the month of September.
Q. Did you ever hear of your father owning or working any other mine except this one now known as the Big Copper mine?
A. He worked several.
Q. In that vicinity?
A. Yes, sir; near the same one.
Q. Were they all in the same mountain?
A. In the same mountain.
Q. Do you know the place known as the Palo Amarillo planting ground?
A. Yes, sir.
Q. Did you ever know of his working any mine close to the Palo Amarillo planting ground?
A. Yes, sir.
Q. About what time?
A. I do not recollect the exact time that he worked it. He
301 generally took me along with him.
Q. Do you know whether your uncle Melquiades Ramirez worked that same mine that you speak of there?
A. No, sir; he did not work it.
Q. Did he not live with your father at that time?
A. Yes, sir; he did.
Q. Did not he discover it?
A. No, sir.
Q. Whereabout is that mine situated?
A. It is about a mile and a half from Golden, on the Reasl de San Francisco.
Q. In what direction?
A. On the southern side.
Q. Is it west of south or east of south?
A. It is a little west of south.
Q. Which side of the road is it upon that goes to Palo Amarillo?
A. It is between the two roads that go to San Pedro; that is, the old and the new road. About half way between.
Q. About how deep is that shaft on that mine?
A. Well, it is an old lead, probably five or six feet deep. It was discovered and prospected by my father.
Q. You can remember at the time when he did discover and prospect it can you?
A. Yes, sir.

On cross-examination by counsel for complainant, witness testified as follows:

Q. In 1865 did you have an uncle or relative by your own name living at Real de San Francisco?
302 A. Yes, sir.
Q. Did he occupy any official position at that time?
A. No, sir.

(In addition to the general objection heretofore agreed upon, defendant, by counsel, here offers objection to this question and answers on the ground that it is not the best evidence; the records being the best evidence.)

Q. Was he justice of the peace at any time out there about that time?

(Objected to by counsel for defendant on the ground that it is not the best evidence; the records being the best evidence.)

A. No, sir; about that time I myself was a justice of the peace.

Q. You were then a justice of the peace in April, 1865, at the Real de San Francisco, *at the Real de San Francisco?*

A. Yes, sir.

Q. At the time that you were justice of the peace did your father, Jose Serafin Ramirez, with his brother Melquiades Ramirez and Manuel C. y Lopez and Juan Ortiz, make a petition to you as justice of the peace, to register a mine of lead and silver at the Palo Amarillo?

A. It is the same that I have just spoken of; and the shaft is from five to six feet deep.

Q. In that petition did they describe it to you as an ancient mine?

A. No, sir; it was a lead; it was not an ancient mine, but a petition to take possession of a lead.

Q. Examine the first page of the paper, marked "Exhibit M-5" in Spanish.

(Paper referred to (Exhibit M-5.) handed to witness and examined by him.)

303 A. It is the same thing that I have stated. I placed my certificate to that—I was at the same mine with peons working the mine. It was a lead only; I was a justice of the peace and I lived with my father. I had then been married two years—my father worked many leads near the large mine.

Q. How old were you at that time that you were justice of the peace there?

A. I was going on 19 years of age. I married when I was going on 18 years of age, and had been married two years when I was justice of the peace.

Q. Do you know whether, about October, 1864, or any time during that year any locations were made by your father of abandoned mines in and about the town or Real de San Francisco?

A. Yes, sir.

Q. While you were justice of the peace do you know whether a man by the name of E. W. Eaton made any location of mines upon a mountain known as the Oroque?

A. He made none in my court; nothing of the kind took place.

Q. Do you know a person—you knew a person at that time by the name of E. W. Eaton, did you?

A. Yes, sir.

Q. Do you know whether he made any contract with your father on or about the first day of July, 1865, to purchase the San Pedro and Cañon del Agua grants, for himself and for Cooley and McFarren?

A. Yes, sir.

Q. Was that contract in writing?

A. Yes, sir.

Q. Do you know where that is, that writing?

A. Yes, sir; I know.

304 Q. Where is it?

A. In my own hands.

Q. Have you it with you now?

A. No, sir; I have not got it with me.

Q. Do you know, at that time, what boundaries were given by your father of the lands that he was selling to these parties?

A. Yes, sir; I knew it, by the same contract.

Q. Well, what was the eastern boundary given in that contract?

(Objected to by counsel for defendant on the ground that the contract is the best evidence, the witness having stated that he knows it by the contract.)

A. The highest mountain of the Oroque. That is on the east.

Q. Was that given in that paper at that time, describing it in that manner?

A. Yes, sir.

Q. You are certain that the Oroque was mentioned in that contract as one of the boundaries, are you?

A. Yes, sir.

Q. Well, is it not a fact that there was no mention in that paper at all of the Oroque as a boundary?

A. It mentions the highest mountain of the Oroque.

Q. Were not the boundaries in that deed described as follows: "Commencing and running a direct line from the source from where the water from the spring of the Tuerto flows up to the summit of the Cuchilla in front, and to the west of the town of the Placer, and from this point in a direct line to the spring of the Cañon del Agua to the southeast, until you come down to the other side of the mountain, on the southeast of said spring; and from this point

305 in another direct line to the Tuerto spring, terminating at said spring, and including the sources of the water thereof; and terminating at the point of commencement of the line, also the land embraced within said boundaries; without affecting in any manner the legal rights that any other person or persons may have within the limits.

We also sell a coal mine situated in the cañon above the Tuerto spring, also one hundred and sixty acres of the land deeded to us on the public land of said Jose Serafin Ramirez.

The conditions are that E. W. Eaton, for himself and representing all of his associates hereinbefore mentioned, obligate and bind themselves to pay and deliver to Jose Serafin Ramirez and to Maria Antonia Sandoval and Jose Serafin Ramirez, as president of the com-

pany aforesaid, or to their heirs and assigns the sum of $30,000 in money, on or before the 15th day of October of the present year (1865) without any discount or defalcation."

(Objected to by counsel for defendant because it does not include the entire description, and because the paper itself is the best evidence.)

A. This is the first contract, but the confirmation is another. Forty thousand dollars was the last contract.

Q. Was not that contract which you refer to now made upon the 23rd day of October, 1865?

A. There were three contracts made, but the last was the final contract. I have them all.

Q. Well, in the contract that was made on the 23rd day of October, what were the boundaries? Do you know how the boundaries were described at that time?

A. Yes, sir.

306 Q. Well, state them, please.

A. They were the same as the last. He did not sell the Tuerto spring. He sold the Tuerto mountain and the mine is immediately connected with the mountain.

Q. In any of those contracts which you have mentioned as having been made by your father with these parties, is the Oroque in any of these descriptions mentioned as one of the boundaries, or in any manner mentioned?

A. The highest point of the Tuerto mountain which is the east and near the Real del San Francisco which is Oroque. That is the highest point of the mountain. There is a stone mark on the highest top of the mountain marked by the surveyors.

Q. Well, do you not know as a fact that in none of these three contracts made by your father either with Mr. Eaton, or any of those parties, Carey, Cooley and others, that the Oroque is in no manner mentioned as one of the boundaries?

A. It is mentioned.

Q. Examine here the paper marked "Exhibit L. 2"

(Exhibit L. 2 handed to witness and examined by him.)

A. The document shown to me is prior to the last contract, and some things that are stated there are not included in the last contract.

Q. When was the next contract made; what time?

A. In the year 1866.

Q. Was not there a contract made by your father with the same parties upon the 7th day of March, 1866, giving an extension of the time for the payment mentioned in this contract made upon the 23rd day of October, 1865?

A. The contract was made and it was executed in the year 1866.

307 Q. Do you know anything about a contract then that was made by your father with these parties upon the 7th day of March, 1866?

A. Yes, sir.

Q. Now, was there not another contract made with your father and with Carey, Cooley, Kitchen and others upon the 8th day of May, 1866?

A. Yes, sir; that was the last contract.

Q. Do you remember whether there was a contract or deed that was made at that time?

A. It was a contract and a deed.

Q. Well, was there not another deed made upon the 19th day of May, 1866, by your father and mother?

A. They made several, but this was the last; we have all of them. I have them myself.

Q. Have you in your possession then, what purports to be a contract or bond, made by your father and mother to C. E. Cooley, A. B. Carey, John C. McFarren C. S. Hinckley and H. B. Denman and acknowledged before W. W. Griffin, as notary public, witnessed by David J. Miller and Richard Kitchen, and executed upon the 8th day of May, 1866?

A. Yes, sir; I have it in my possession.

Q. Have you that paper with you?

A. It is at my house.

Q. Was there any mention made in that contract about the Oroque being one of the boundaries of the land that your father sold?

A. The highest point of the Oroque, as I have heretofore said.

Q. And that description you say, is in that agreement made upon the 8th day of May, 1866, by your father and mother?

A. Yes, sir; it is the highest point of the mountain to the east, where there is a mark made by the surveyor.

308 Q. I ask you if that was mentioned and described in that agreement made on the 8th day of May, 1866?

A. It is the same as I have stated.

Q. Well, is it not true, that it is described in that bond in this manner: "That whereas we have this day bargained and sold to the said C. E. Cooley, A. B. Carey, John C. McFarren, E. S. Hinckley, C. W. Kitchen and H. B. Denman, our property known as the grants of the San Pedro and Canon del Agua, together with certain mines, a detailed description of which is given in the articles of agreement between ourselves, parties of the first part and John C. McFarren and C. E. Cooley, A. B. Carey and C. W. Kitchen, bearing date on or about the 22nd day of October in the year 1865, for the sum of $32,000, of which amount we have received the sum — $1,200, the receipt of which is hereby acknowledged. Now, if the said C. E. Cooley, A. B. Carey, John C. McFarren, C. S. Hinckley, C. W. Kitchen and H. B. Denman, shall pay over to us the further sum of $18,800 on Saturday, the 19th day of May, 1866, and execute to us their note for the remaining sum of $12,000, made payable when the grant of Canon del Agua is confirmed by the Congress of the United States, and the grants of San Pedro and Canon del Agua are surveyed by the authority of the United States, and the titles of said property made perfect by us to the said C. E. Cooley, A. B. Carey, John C. McFarren, C. S. Hinckley W. C. Kitchen and H. B.

Denman, we bind ourselves and our legal representatives to execute and deliver to the said C. E. Cooley, A. B. Carey, John C. McFarren, C. S. Hinckley, C. W. Kitchen and H. B. Denman, good and sufficient warranty deeds for all the property herein described and referred to." Now, is that not the description that was given in that contract that was made on the 6th day of May, 1866 and is it not all the description?

309 A. This is the last.

Q. But was there not a deed made then in accordance with that agreement on the 19th day of May, 1866?

A. It was transferred, but we hold it ourselves; I hold all the papers

Q. Was there any note given on the 19th day of May in conformity with the contract for the sum of $12,000?

A. Yes, sir.

Q. Do you know where that note is now?

A. It is not here at present. My mother has it, but the remainder of the papers are in my hands.

Q. Do you know whether that note has been paid or not?

A. It has not been fully paid. There are $4,000.00, with interest yet due on it, and on the contract there is $1,500 yet due for having failed to comply with the agreement.

Q. When was the last payment made on that note?

A. I do not recollect, sir; I can ascertain that hereafter.

Q. Well, how long ago do you think — is, as near as you can recollect?

A. When a person cannot recollect a thing they are not able to state the fact. I will not testify unless I testify correctly.

Q. Did you about three years and a half ago negotiate with a person from the city of New York, who visited you at your place there, to collect those notes for you, and that you claimed at that time that the amount was some $10,000 with interest, due on that note?

A. No, sir; we claimed $2,000 on the note and $1,500 with the interest.

Q. Well, did you have any conversation with any person about two years and a half ago from the city of New York in regard to collecting this money that I have referred to?

310 A. No, sir.

Q. Did you not agree to meet that party here in the city of Santa Fé and did you not afterwards came in here for the purpose of seeing him?

A. No, sir; I could not have come here at any time without the consent of my mother and my brothers, my rights are one thing and I cannot act for others.

Q. I asked you if you did not come though?

A. I have been here many times.

Q. Did you not, at that time, tell Jose B. Ortiz that the notes were in the hands of Colonel Breeden and that you could not get them?

A. I obtained them afterwards. I said nothing more about it. You (complainant's counsel) were living at the time at the house of Jose B. Ortiz, I recollect but little about it.

Q. Were you present at the town of Real de San Francisco in May, 1866 when a person by the name of W. W Griffin and David J. Miller, and a man by the name of Cooley and Asa B. Carey were at the town of Real de San Francisco, the time this contract was made with your father on the 8th day of May?

A. Yes, sir.

Q. Did you accompany them at the time they went to take testimony in regard to the grant of the Cañon del Agua and the San Pedro?

A. Yes, sir; I went with my own father.

Q. Was there any survey of any kind made at that time?

A. The survey was made afterwards.

Q. I ask you if this was not though a partial survey made at that time?

A. No, sir; after the sale was made the survey was made.

310½ Q. Did Mr. Griffin have any surveying instruments with him at that time that he was there the first time?

A. He had.

Q. Were you present *with* at the time there was a mound of stones erected and a stone with some inscriptions upon it placed upon the top of the mountain where this big copper mine is?

A. Yes, sir.

Q. Well, that mountain right there, at that point is not called the Oroque, is it? Is not the Oroque farther to the east than that?

A. It is separated. The Oroque is separated from it; some call it by one name and some by another, and it is also called the cañon of Tio Lucero. That is on the east side.

Q. Well, at that time, where they set up that mound there in May, was that not determined at that time to be the highest point? Was not that selected and established at that time as the eastern boundary?

A. The Tuerto is in front of the Real de San Francisco and the mountain continues on the east called the Oroque which is the same mountain; in the same mountain in which the copper mine is situated is called the Tuerto mountain, and then the chain continues on to the east.

Q. But what I asked you was this: was not that point where they in May, 1866, put up that monument established at that time as being the eastern boundary of the grant?

A. It was considered the eastern boundary and we are ready to go and show it.

Q. Do you know, at that time, (in May, 1866) what point your father claimed was the northern boundary of the grant of the Cañon del Agua?

A. The Tuerto mountain.

Q. On the north?

311 A. On the north, yes. It is to the north of San Pedro.

Q. But I ask you what it was that he claimed was the north boundary of the Cañon del Agua grant when they were out there in May?

A. Up to the Tuerto mountain, in front of the Real de San Fran-

cisco; and it is to the north of the old San Pedro, which is about ten miles from the Real de San Francisco.

Q. Is there not, about a mile and a half south from the town of San Francisco, on the road leading to the San Pedro ranch, another road turning off to the right, towards the Palo Amarillo planting ground?

A. Yes, sir.

Q. And is it not true that at that time (in May, 1866) that your father insisted that that was the northern boundary of the grant of the Cañon del Agua, and that they had no right to go any farther north than that?

A. I do not recollect of that.

Q. Do you know, or were you present when Mr. Griffin, with some other parties took testimony at the forks of that road on the 7th day of May, 1866?

A. Yes, sir.

Q. Was there anything said then, at that time, about the forks of that road being one of the boundaries of the grant?

A. On the old road leading to the San Pedro there is a monument placed and near the Palo Amarillo.

Q. But I ask you whether upon the 7th day of May, 1866, the time that Mr. Griffin was there, at the fork of that road with your father and with other parties, was there anything said about that point being one of the boundaries of the Cañon del Agua grant?

A. Yes, sir.

312 Q. Well, what was said?

A. That was the boundary of the grant. Serafin Ramirez had sold it.

Q. Are there not little mountain- west of the Albuquerque road and near to the Palo Amarillo planting ground?

A. Yes, sir; there are.

Q. What are those called?

A. They were called the small mountains of the Palo Amarillo.

Q. Is there any mine situated west of the Albuquerque road and near those little mountains that was formerly worked by your father?

A. No, sir.

Q. I will ask you to examine this paper, and that signature, and state whether or not that is your signature.

(Witness examines paper.)

A. It is my signature. This was a deception practiced upon me which I can prove by witnesses. I cannot oppose the sale made by my father. I cannot read English. It was read over to me differently. I thought it was a denouncement of a mine.

(Paper referred to is here, by counsel for complainant, presented, filed and marked "Exhibit O.")

Q. You say that you cannot read English?

A. I cannot read English, it was explained to me as though it was the denouncement of a mine.

Q. Well, if you cannot read English how do you know what this is yet?

A. I cannot read it, but it was presented to me as a denouncement of a mine and for me to sign that, there were no other questions in regard to it.

Q. I asked you if you cannot read English how you know what is contained in that now?

313 A. I knew it for the reason that I have been informed that it was a plan to catch me as against the sale made by my father.

Q. From whom did you learn that?

A. Well, I have heard, but I will not state who informed me. It will be done in time. If it had been in Spanish I would not have placed my name to it.

Q. Are you acquainted with Juan Delgado?

A. I know Juan Delgado very well. He was present at that time.

Q. Did he read this over to you in Spanish at that time?

A. He told me different at that time. He said that he was going to denounce a mine.

Q. Did he read this over to you in Spanish?

A. He did not read it over. He explained to me what it contained. He presented it to me and stated that he wanted my signature. Hudson was a justice of the peace. He is now in Santa Fé.

Q. Did you go before Mr. Hudson at all?

A. Yes sir.

Q. Was Juan Delgado present at the time you signed your name?

A. He was not, sir. He only talked to me about the paper.

Q. Was he present when you were before the justice of the peace?

A. No, sir; he was not.

Q. When and where did he explained it to you; and in whose presence, if any person?

A. In the presence of my wife and other persons who were present, and a man by the name of Campos who was residing at my house, also Agapito Lujan. Juan Delgado presented the paper to me and told me that it was the registry of a mine, and asked my signature to it.

Q. And is this the paper that he presented to you?

314 A. That is the same; my name is to it. I wrote it with my own hand.

Q. And you went before a justice of the peace (J. R. Hudson) there, did you, and acknowledged this?

A. Yes, sir; I said it was my signature.

Q. Well, is it not true as stated in here that there is a mine to the west of the Albuquerque road that was formerly worked by your father?

A. It is not to the west; it is on the east.

Q. Well, where is this mine situated that you said was registered by your father before you that was over the Palo Amarillo?

A. It is about a mile and a half south of Real de San Francisco, between the two roads. That is between the road that goes to old

San Pedro and the one that goes to the new San Pedro; about half way between the two roads.

Q. Do you know where in that vicinity the San Isidro mountains are; and if so, what direction are they from the Cañon del Agua spring?

A. Yes, sir; the spring is in the same mountain to the south.

Q. Whereabout is the San Lazero mountains from the spring of the Cañon del Agua?

A. It is on the north side of San Francisco.

Q. Do you know any mountain in the vicinity of the San Pedro, called the San Pedro mountain?

A. Yes, sir.

Q. In what direction and how far are they from the Cañon del Agua spring?

A. They are to the south seven or eight miles from the Cañon del Agua.

Q. Are there any mountains lying between them and the Cañon del Agua spring?

A. It is the same mountain. It is a chain.

315 Q. Were you a witness to the deed that was made by your father and mother to Carey, Cooley and others, made upon the 19th day of May, 1866; in which they sold the Cañon del Agua and San Pedro grants?

A. I was not a witness, but I signed for my mother.

Q. Do you know where that deed is, and whether it ever was registered in the office of the clerk of the probate court of the county of Santa Fé?

A. Yes, sir; and I know where it is. I have it in my possession.

Q. Do you know whether it was made in duplicate or not; or whether there was just one deed made at that time?

A. It was a contract and a transfer. We have a copy of it as a matter of course. I think that the other party has a copy of the same that we have in our possession; and it is of record in the probate court's office, in Santa Fé.

Q. Do you know whether upon that same day (the 19th day of May) that any other deed was made by your father and mother conveying to these same parties mentioned in this other deed, certain houses and lots and mill houses, situated in the placer of San Francisco?

A. Yes, sir.

Q. Well, at that time that Mr. Griffin and others were out there at San Francisco, in May, 1866, do you know your father at that time disclaimed any right to the lands upon which the town of San Francisco was situated, except those that he had purchased from parties living there?

A. That was all he sold.

Q. Did he at that time claim that any of the lands upon which the town was situated were included in said Cañon del Agua grant?

A. No, sir; only the houses that he owned.

316 Q. Have you within the last year, sold any lands to a person by the name of Talbot living in the town of Real de San Francisco?

A. Yes, sir.

Q. Under what title did you claim that land, by inheritance from your father, or by purchase, or in what way?

A. It was by inheritance from my father.

Q. Well, are not the lands which you sold, now embraced within the lines of the Cañon del Agua grant, as surveyed and patented?

A. No, they are not; they are separated.

Q. Well, do you not know that the lands which you sold Mr. Talbot are embraced within the limits of the grant of the Cañon del Agua as now surveyed and patented by the United States?

A. These are the lots sold subsequently to the company, and separated from the grant.

Q. But what I ask you is if they are not inside of the lines as surveyed?

A. No.

Q. Do you — where the lines are of the grant as now surveyed by the United States there, of the Cañon del Agua, at the town of San Francisco?

A. Yes, sir.

Q. Describe them in relation to the church that is in the town of San Francisco?

A. On the east, the highest point of the mountain of Oroque.

Q. Does not one of the lines of the grant as now surveyed pass through one of the corners of the church in the town of San Francisco?

A. It does, sir.

Q. Well, does not that line continue on still further to the
317 north of the church until it intersects a point northwest of there?

A. It intersects with the road going to San Pedro.

Q. Is not this property which you sold south of the church and east of the road going to San Pedro?

A. It is on the east of the road; it is on the eastern side of the church, and of the house of my residence, as the Mexicans state, on the side where the sun rises.

Q. And this land that you sold to Talbot, is that not the place where he has now erected a hotel?

A. It is not, sir; it is separate. I held a deed to the property on which he built, but I gave no transfer; and I acquired it through Aranda; and Aranda sold it subsequently—Francisco Aranda.

Q. Do you know a house and lot in that town that was formerly owned by the man by the name of John Scolly?

A. Yes sir.

Q. Is this one of the tracts that you disposed of?

A. No, sir; it is a separate tract.

Q. But do you now claim the title to that tract of land?

A. No, sir; it is separate.

Q. This Oroque that you mention as being the eastern boundary of the Cañon del Agua grant; please describe what it is.

A. It was heretofore called the Cañon of Tio Lucero. It has two names.

Q. Is that point that you speak of as the eastern boundary; is it a cañon or is it a tall mountain peak?

A. It is the highest point of the mountain called by the name of Tio Lucero and Oroque.

Q. How long did you continue to act and up to what time did you continue to act as justice of the peace there at Real de San Francisco?

318 A. Two years.

Q. What time did your office expire?

A. I was there the first time one year, and then I served again another year, at that time the election was held every year.

Q. Were you a justice of the peace there in the early part of 1866?

A. Yes, sir.

Q. Well, during the year 1865, and during the early part of 1866, and up to about the 6th day of May, were there not many mining locations made in those mountains, and in the vicinity of Real de San Francisco by your father and others?

A. There were locations made by my father only.

Q. Were there not some number of locations made in 1865 by C. E. Cooley and C. W. Kitchen, and E. W. Eaton, and A. B. Carey?

—. No, sir; none; they had a trade with my father only.

Q. Did not Francisco Aranda and others locate a number of mines during the year 1865?

A. They made no registration, my father prevented them from so doing.

Q. Do you not know that in the year 1865 that Francisco Aranda and many others made registration of mines located in the mountains in the Real de San Francisco before you, as justice of the peace?

A. No sir; none.

Q. Did not Jesus Maria Martin and your father, Jose Serafin Ramirez, and Melquiades Ramirez, Juan Ortiz, Eulogio Aranda and Manuel Crespin, register a mine before you, located in the Sierra de San Francisco?

A. None; all that were registered was by my father; my father used their names to locate claims as a company.

Q. Look at this paper marked "Exhibit M-3."

("Exhibit M-3" handed to witness and examined by him.)

319 A. It is not necessary for me to examine very closely, I have the papers of the registration made, as made by my father; I have all the titles.

Q. I ask you then, if the mine purporting to have been registered there before you at that date, was registered or not, before you?

A. Yes, sir; it was before me and by my father.

Q. Who succeeded you as justice of the peace there, in the Real de San Francisco?

A. Francisco Aranda.

Q. Do you know whether in November, 1865, Pedro Montoya was justice of the peace there at that place, or not?

A. Yes, sir, he was; Pedro Montoya was justice before me and Francisco Araoda after me.

Q. Do you know whether C. E. Cooley; and C. W. Kitchen, and E. W. Eaton and A. B. Carey, in 1865 made registration or denouncement of the old mine known as the Campbell mine, in the mountains of San Francisco?

A. They made none; my father Serafin Ramirez, and brothers registered mines during the time I was alcalde.

Q. Do you know whether E. W. Eaton, in the early part of 1866, located or made location on some two or three mines in the Sierra de Oroque?

A. None.

Q. If he had made any locations there of that kind do you think that you would have known it?

A. Most assuredly so.

Q. Well, is it not true that he did register three mines there?

A. I know nothing of it.

320 Q. Well, do you know whether at the time that that survey was made, in September, 1866, of the Cañon del Agua grant, that Mr. E. W. Eaton quarrelled with those parties because they had extended the lines and taken in the claims located by him?

A. I never knew anything about Eaton; all that I know about him is that he put up a small house at the Ojo de Valverde and my father quarrelled with him about it in regard to a mine that he had there and he took it away from Eaton.

Q. Do you know whether in 1867 or 1868 a suit was brought against your father by Simon Delgado and others—persons claiming to be heirs of Ricardo Campbell for the mine known as La Providencia?

A. Yes sir.

Q. Do you know whether, also, at the same time a suit was brought by the same parties against Carey, Cooley, and Eaton for a mine in the same vicinity, there?

A. It is the same mine.

Q. Well, is that mine within the boundaries of the Cañon del Agua grant as surveyed by the United States?

A. It is almost in the center and very close to the mine that my father sold; my father defended the suit and gained it; and it was in his possession.

Q. Well, do you not know that on the trial here in Santa Fé, against Carey, Cooley and Kitchen, that the verdict was against them and in favor of the Campbell heirs?

A. No, sir; the suit was in favor of Serafin Ramirez.

Q. But I am asking you about the suit against Carey, Cooley and Eaton for the same mine, was not the verdict against them?

A. No sir.

321 Q. Was it not true that after the trial then, that the suit against your father by these same parties was compromised?

A. It was not compromised. The sentence was given in his favor in the case of Simon Delgado.

Q. Well, is it not a fact that the records in the clerk's office here show entirely different from what you have now stated?

A. They only show the facts.

Q. Is it not true that afterwards the Campbell heirs sold this mine on that compromise for $750 and gave a quitclaim deed for it?

A. I knew nothing about that. I only know that my father was the owner of the mine.

Q. And when did you first know of your father owning or claiming that mine?

A. When he sold the property, I understood that he had given some money to Simon Delgado in the court on a compromise even after the (Delgado) had lost the suit; but he called my father in when he found he was going to lose the case, and entered into a compromise.

Q. When did you first go to live at the town of Real de San Francisco with your father?

A. I went there in 1855.

Q. Was your father living at the Real de San Francisco in 1855?

A. To my recollection he was.

Q. Where had you been living before that time?

A. In old San Pedro.

Q. Well, how long did you remain at Real de San Francisco then? When you moved there?

A. About two years.

Q. Where did you go then?

A. We returned to San Pedro again.

322 Q. Where was your uncle Melquiades Ramirez living during all this time?

A. He lived at the Maderia; to the west of San Pedro.

Q. Do you remember what time your uncle Melquiades married?

A. He married a long time afterwards; a very short time ago, but he lived with a woman before that time, under an agreement. He was always living with my father except when he was living with the woman.

Q. What business are you engaged in at present, Mr. Ramirez?

A. I am employed with one of my daughters at the old Placers in teaching school.

Q. Have you also within the last few months established a store there, at the old Placers?

A. No, sir; I had in Golden some years back, and I am going to have another one.

Q. Well, have not you commenced one there at the old town of Dolores in conjunction with Jose Armijo?

A. No, sir; he is alone.

Q. Have you not been buying a considerable amount of goods lately, in the city of Santa Fé?

A. No, sir.

Q. Either by yourself or through Armijo?

A. No sir.

Q. Did you know anything particularly about these mines at the new Placers until the year 1864 and 1865 when your father organized that mining company of which he was made president?

A. Yes, sir.

Q. Do you remember who was in that company with your father?

A. Yes, sir.

323 Q. Please state who they were.

A. There was Cooley, John McFarren, Carey and Kitchen. I only knew four. I knew them personally.

Q. Well, in 1864, was not Jose Leandro Perea, who is now dead, was he not incorporated with one or two others as a company with your father, to work mines in the new Placers?

A. Don Jose Leandro Perea was going to enter but he thought it was too expensive, much money had to be expended and he would not do it, and my father continued to work alone. The money that Jose Leandro Perea furnished to my father—some $6,000 or $7,000 was afterwards paid to him by us and we do not owe a cent on it.

Q. When did you first learn or know anything in regard to the boundaries of the Cañon del Agua grant?

A. I always knew it whilst I was with my father. I knew it prior and I know it yet.

Q. But, did not your father in his application to have it confirmed describe the boundaries as being the Cañon del Agua spring upon the east?

A. Yes, sir.

Q. Well, when did you first learn that that was not the correct boundary?

A. I have not known anything of the kind. I always knew it to be correct.

Q. Well, how is it then that in the deed that was made by your father and mother on the 19th day of May, 1866, that they described the Cañon del Agua spring as being the southern boundary?

A. On the south the Laguna de los Indios.

Q. How is it that your father describes in his petition, both

324 to the Mexican government and to the United States Government, the Cañon del Agua spring as being the eastern boundary of the Cañon del Agua grant, and that it is now made the southern boundary of the grant, why has it been thus changed?

A. It was not changed; this was the boundary line of the mine but not the boundary line of the grant.

Q. Well, which was the boundary line, then, of the grant on the south?

A. On the south the Laguna de los Indios, and where the creek of San Antonito empties into the San Pedro creek.

Q. Do you know what mountain it was upon the west that was described in your father's petition to the government of Mexico as being the boundary of the land that he asked for?

A. The Sandia mountains.

Q. Well, is it not true that the first that you knew anything in regard to these boundaries or the description of the grant was in

1864 and 1865, when your father was negotiating for the sale of them?

A. I knew of it before 1863 or 1864; as a matter of course I did, for the reason that I was married and I lived with him in his own house until he sold it; and we then left for the Tijeras.

Q. Well, did you not, with your father move from San Pedro to Real de San Francisco about the year 1864?

A. We were at both places. He was working the mine and the others were taking care of the ranch.

Q. Now, when did you first remember of his working this mine?

A. As long as I can recollect.

Q. Well, do you know whether your father had anything to do with that mine prior to 1854?

A. He worked it all the time, as long as I can remember;
325 from the time that I was 9 or 10 years of age, and can recollect. I was born in the year 1845.

Q. Then it was about the year 1854 or 1855 that you remember of his working it?

A. Then I can recollect back to that time.

Q. Do you have any recollection of your father and your uncle Melquiades having a testing furnace at the Uña de Gato?

A. Yes, sir.

Q. Do you remember what year that was?

A. I do not recollect the year, but I recollect distinctly that they had a furnace there; I recollect, also, that the ore was taken from the mine that my father sold, in order to assay it.

Q. Do you know how long he continued to work the mine at that time?

A. He worked it up to the time at which he sold it, and several other leads also. He also sold several houses and lots in the placer.

Q. Where did he have this ore worked that was taken from the mine?

A. The first time that I can recollect he worked it at the old San Pedro. I only state what I saw; I have heard that he worked at other places.

Q. Have you ever made any deed to any of this Cañon del Agua grant?

A. No sir; I have sold the Uña de Gato ranch, because it was mine.

(On his redirect examination, by counsel for defendant, witness testified as follows:)

Q. You say that the first time you knew your father to work this mine that the metals were reduced at San Pedro?

A. Yes, sir; in old San Pedro; I recollect; I was young.

Q. But you had heard of his working it at other places before that, you say?

326 A. At the placer of San Francisco first. There was a brother of his by the name of Leonardo working at the Real de San Francisco for him. He is now deceased—he died at the joya of Servilleta.

Q. You stated in cross-examination that the fork of the road going down from San Francisco to Albuquerque was on the boundary line of this grant?

A. That is one of the boundaries, sir.

Q. Was not that entire road from San Francisco to the Palo Amarillo one of the boundaries?

A. Yes, sir; it was the old road that goes to San Pedro.

Q. Did the ole road that went to San Pedro go by the Palo Amarillo?

A. Nos, sir; it goes above.

Q. How close did it go to the Palo Amarillo?

A. About five hundred yards.

Q. Now, this fork of the road, which you have been talking about is the road that goes to the left. Where does that go to, as you go south?

A. The left-hand road goes to the San Pedro mine. The one that was sold by my father.

Q. Is that road that goes to the left an old road or a new one?

A. It is a new road made by my father to the mine.

Q. Well, now; there is where the new town of San Pedro is, is it not?

A. Yes, sir; that is called the San Pedro camp.

Q. Now, before the establishment of the new camp of San Pedro was that new road a wagon road or a simple trail?

A. It was a trail. It was traveled by my father with wagons but very little. They generally brought the ore down on burros.

Q. Then, the main road was the road that turned to the
327 right down in the direction of the Palo Amarillo?

A. Yes, sir; and the lead mine is on the left-hand side of the old road.

Q. Well, now, you stated that your father denounced that mine before you about the year 1865, was that an old mine then, or a new discovery made by your father?

A. It was an old mine, but one that he worked.

Q. Discovered at the time that he denounced it?

A. Yes, sir; he discovered it. He worked that, and worked also the principal mine.

Q. What do you mean by the principal mine?

A. I mean the copper mine that he sold.

Q. You state at the time you signed this paper which is marked "Exhibit O" that they told you it was the location of a mine?

A. Yes, sir; as the denouncement of a mine.

Q. Did Juan Delgado read it to you?

A. Yes, sir.

Q. Does Juan Delgado understand Spanish as well as he does the English, or better?

A. As I think he understands the English as well as he does the Spanish.

Q. In explaining to you the contents of this paper did he call that little mound there at the Palo Amarillo by the name of the little Tuerto mountain?

A. No, sir.

Q. Did you ever hear those little peaks there at the Palo Amarillo called the Sierrita del Tuerto?

328 A. They have always been called the small mountains of the Palo Amarillo. I never heard them call- by any other name.

Q. Then you did not know that there was any such statement as that in this paper when you signed it?

A. I did not know its contents. I did not understand its contents.

Q. At the time your father sold that grant had it been surveyed; or was it surveyed afterwards?

A. It was surveyed after the sale.

Q. You stated that your father did not sell the houses or property in the town of Real de San Francisco?

A. He sold only what belonged to him, and excepted what was not his.

Q. Do you not know that in the first two contracts he expressly said that the property belonging to the other parties should not be included?

A. He only stated that he sold his own.

Q. Did not he put a provision in them reserving that which belonged to the other people?

A. Yes, sir.

Q. Well, now, by what provision did he intend to protect the people of the town of San Francisco?

A. Yes, sir; he always did that.

Q. Did not he, at the time of the final sale or about the time of the final sale have some difficulty with the people to whom he sold the property because he insisted the people who had acquired title there should not be disturbed?

A. His sale was accepted; there was no difficulty that I know of.

Q. Did not the people to whom he sold want him to put in that property also, and he refused to do it?

A. He would not consent to it. He only transferred what
329 belonged to him. It is very plainly stated in this contract. It says without prejudice to any third party.

Q. You stated that the southern boundary was the Laguna de los Indios, was the Laguna de los Indios the southern boundary of the Cañon del Agua, or was it the southern boundary of the San Pedro?

A. It was the Cañon del Agua.

Q. Are you not mistaken about that?

A. I am not, sir.

Q. Was not there an extra league connected with the San Pedro grant?

A. There was not; but if there ever was I did not know anything about it. I only know the boundaries. I state exactly what I know and nothing more. I was very small when my father was in that business.

Q. Do you remember whether at that time this land was surveyed, there was some evidence taken at the Cañon del Agua spring?

A. Yes, sir.
Q. Do you remember what other points they took evidence at?
A. At San Pedro also.
Q. Did they take any up at this mine?
A. Yes, sir.
Q. Any other place that you remember?
A. Those are the only ones. In the placer and old San Pedro, we hauled water in a wagon for the surveyor when he was surveying the grant.
Q. At the time that your father sold this grant did you own property yourself in the town of San Francisco?
A. I had a house there, only.

JOSE AGUSTIN RAMIREZ.

The above testimony having been read by me over and explained to the witness Jose Agustin Ramirez, in Spanish, was signed by him in my presence.

SAMUEL ELLISON.

330 Testimony of Mariana Antonio Sandoval before Samuel Ellison, special commissioner, in the case of The United States of America *vs.* San Pedro & Cañon del Agua, district court, Santa Fé county, New Mexico, given on the 20th day of April, A. D. 1883.

MARIANA ANTONIA SANDOVAL being first duly sworn on behalf of the defendant herein on her examination-in-chief by counsel for defendant testified as follows:

Q. Where do you live?
A. I live in Las Tijeras.
Q. Did you know Jose Serafin Ramirez, and if so, state what relation you bore to him.
A. Yes sir; I knew him, he was my husband.
Q. Where was he living at the time of his marriage with you?
A. Here in Santa Fé.
Q. How long did you live in Santa Fé after your marriage?
A. I cannot recollect the exact number of years.
Q. Where did you go after you left Santa Fé?
A. We went to the Real de San Francisco.
Q. Did you live at the Real de San Francisco before you went to San Pedro?
A. Yes, sir; we lived there first.
Q. When you went from the Real where did you go?
A. To San Pedro—to the ranch of San Pedro.
Q. Well, did you move away from the ranch of San Pedro; and if so, to what place?
A. We returned to the Real again.
Q. Then did you go anywhere else to live during Jose Serafin's life?
A. After he sold out at the Real we then went to the Tijeras to reside.

331 Q. He died at the Tijeras, did he?

A. He died at Tijeras.

Q. Do you know whether your husband during his lifetime claimed any interest in a mine and grant near the Real de San Francisco?

A. I do sir, in a mine near San Francisco.

Q. When did you first hear of his claiming that mine and grant?

A. From the first time that he went to the placers to reside, and I never heard of his claiming any other.

Q. Then I understand you to say that at the time you moved from Santa Fé, to San Francisco, the first time, that your husband was then claiming a mine and a grant?

A. Yes, sir; this is the same mine.

Q. Have you ever been to that mine?

A. I have, sir.

Q. Is it situated in a mountain or in a plain?

A. It is situated in a high mountain called that of San Francisco.

Q. Was that mountain known by any other name except the mountain of San Francisco?

A. It is also called the Tuerto mountain.

Q. Are you well acquainted in that country?

A. I think I am sir, yes sir.

Q. Do you know where the Cañon del Agua spring is?

A. I do not, sir.

Q. Do you know where the Palo Amarillo planting ground is?

A. Yes, sir.

Q. Did you ever hear of a place there called the Cañon del Agua spring?

A. Yes, sir.

332 Q. Was that mountain where the mine is, called the Sierra del Tuerto or the Sierrita del Tuerto?

A. It was called the Sierra del Tuerto.

Q. Did you ever hear of any other mountain except this one where the mine is in that vicinity called the Sierra del Tuerto or the Sierrita del Tuerto?

A. No, sir; I never heard of any other.

Q. You state that at the time you left Santa Fé, that your husband claimed this mine and a grant. Do you know whether he had the papers for it?

A. I think he had. He worked it. I only knew that as the mine of my husband.

Q. Do you know whether at the time he left Santa Fé to go out there, he had any one out there working his mine for him?

A. I think he had, we went directly to the Real.

Q. Do you know where his brother Leonardo was at that time?

A. Yes, sir.

Q. Where was he, and what was he doing?

A. He had him at the Real.

Q. Do you know whether he was out there working this mine for him or not?

A. I do not know. I went to the Real to stop. He may have been working it.

Q. Do you know the name of the grant that he claimed there in connection with this mine?

A. I do not know, sir.

Q. Do you know what he claimed as the eastern boundary of the grant which this mine is on?

333 A. I may know it, if my attention is drawn to it; possibly I may be able to state it.

Q. Do you know whether he claimed that one of the points of the Sierra del Tuerto was a boundary of this grant; and if so, which one?

A. I think that he claimed on one side the road leading to the Palo Amarillo, and on the other side the Cañon del Agua, and on the other side the Oroque.

Q. Well, do you — what he claimed as the line up next to the town of San Francisco?

A. I cannot state exactly, sir, what it is; it is not for a person to know everything.

Q. From the time that you and your husband first moved from Santa Fé to the town of San Francisco up to the time that he sold out there, did he claim that property between the Palo Amarillo road and the Cañon del Agua spring, and this Oroque mountain?

A. Yes, sir.

Q. Do you know whether or not he at various times worked this mine during this time?

A. Yes, sir; he worked it.

Q. Did you ever hear of his owning any other mine there except this one?

A. No, sir; that was the only mine he ever worked.

Q. And in what mountain, now, do you state that mine is?

A. It is near the Real de San Francisco on the mountain, and called the Tuerto mountain also.

Q. Your husband was claiming this mine at the time you moved away from Santa Fé to San Francisco?

A. He always worked it and he always claimed it.

334 Q. Do you know whether he claimed that mine ever belonged to any of his relations? And if so, to whom?

A. I never knew of any one else working it except himself. I think that he claimed it was under his grandfather, or through some other person, or for services that he had rendered to the government of Mexico.

Q. Do you know whether he claimed that his grandfather or his uncle, or some of his relations had owned before he did?

A. I think so.

Q. Well, was it his uncle or his grandfather?

A. Did not I state already that I supposed he claimed it under his grandfather?

Q. Now, do you know whether he claimed the grant to have been made directly, or had papers for a grant made directly to him; or

whether he claimed that from inheritance; or a grant made to him for services?

A. Yes, sir; directly to him for services.

On her cross-examination by counsel for complainant witness testified as follows:

Q. What year were you and your husband married?

A. I do not recollect, sir.

Q. Were you living with your husband at Santa Fé at the time that the American forces came in here, in the year 1846?

A. I do not recollect, sir.

Q. Was it before the American forces came in here or afterwards that you went first to Real de San Francisco?

A. I do not recollect, I think we were there, I cannot make a statement unless I am positive of the fact.

Q. How long had you been married before you went out
335 to Real de San Francisco with your husband?

A. I have such a bad memory I cannot state the time.

Q. How long did you continue to live there at Real de San Francisco when you first went out there?

A. Well, about two years after we left here.

Q. Did you sign any deed with your husband disposing of this property to any person?

A. I did, sir.

Q. When was that and to whom was it made? Or sold?

A. It is the same Government company, and it has been sold about seventeen years ago.

Q. What Government company do you mean, that you refer to?

A. I am speaking of the government company from the States.

Q. Were those persons to whom you sold officers of the United States Government in any way?

A. Colonel Carey was one.

Q. Do you know whether he was an officer in the United States Army at that time or not?

A. I think so, sir.

Q. Do you remember the amount for which it was sold at that time?

A. I do not recollect, sir.

Q. Do you know whether the whole amount was paid or not?

A. The full amount was not paid, sir.

Q. Do you know what amount is still due on that sale?

A. Yes, sir.

Q. What is the amount?

A. Two thousand dollars.

Q. Is that evidenced by any notes of any kind?

A. I have notes.

336 Q. How many notes have you, and who are the parties signing the same?

A. I do not know, I think though that Carey and Mr. Cooley, I do not know what others there are.

Q. How many notes have you signed by these parties?

A. I only have one. It was a note and if the contract was violated my husband had recourse on the company.

Q. Has there any amounts been paid within the last two years and a half upon that sale that was made by yourself and husband?

A. No, sir; no payment has been made.

Q. About two years and a half ago were you not claiming through yourself and your son Agustin that there was due about $10,000— upon that sale?

A. I did, sir.

Q. In what manner, then, has your claim been lessened so that it is only $2,000 now?

A. I do not know, sir.

Q. Are you acquainted with a person by the name of W. W. Griffin?

A. Yes, sir.

Q. Do you know whether yourself and your husband, Jose Serafin Ramirez entered into any agreement with C. E. Cooley, A. B. Carey, John C. McFarren, E. S. Hinckley, C. W. Kitchen, and H. B. Denman, in which you agreed to sell to them the grant of land known as the Cañon del Agua and the San Pedro for the sum of $40,000; which agreement was made in writing, and purported to be signed by yourself and husband and acknowledged before W. W. Griffin; and purporting to have been executed on the 8th day of May, 1866?

A. Yes, sir.

337 Q. You state that that was in writing?

A. Yes, sir; it was in writing.

Q. Do you know where that paper or agreement is?

A. I do not, sir.

Q. Do you remember when last you saw that paper?

A. When we sold it. I think, according to the best of my recollection.

Q. Has not that paper been in your possession, or in the possession of your son Agustin Ramirez within the last two years?

A. The obligation has been in the hands of my son.

Q. Do you — whether it is still there in the hands of your son?

A. He has not got it, sir.

Q. Do you know where it is then?

A. I do, sir.

Q. Where is it?

A. I have it.

Q. Have you it with you?

A. No, sir.

Q. Do you know who wrote that agreement at that time?

A. I believe the company wrote it.

Q. Do you — whether it was written in English or in Spanish?

A. In English.

Q. Do you remember whether it was written in your presence or not?

A. No sir.

Q. Well, is it not written by W. W. Griffin, and is it not in his handwriting?

A. It may be so, I do not know.

Q. Do you remember who were present as witnesses at that time?

A. I do not know, sir.

338 Q. Did you know a person by the name of Richard Kitchen at that time?

A. I think so.

Q. Do you remember whether he was present there at the time that you signed that paper?

A. He may have been, but I cannot recollect.

Q. Do you know a person by the name of David J. Miller, or did you know a person at that time by that name?

A. I did not, sir.

Q. Do you remember whether any money was paid to yourself and husband at that time by those parties when you signed that paper on the 8th day of May?

A. Yes, sir; money was delivered.

Q. Do you remember how much was paid at that time?

A. I have not an understanding sufficient to state.

Q. Well, was not the sum of $1,200 paid at that time?

A. I know that money was paid, but I have not the memory to state the exact amount; I have not got the head to state.

Q. Do you remember whether at that time that the parties with whom you made the agreement gave their note for $12,000?

A. Yes, sir.

Q. Do you remember what the conditions of that note were as to the time of its payment?

(In addition to the objections heretofore agreed upon counsel for defendant objects to this question on the ground that the note itself is the best evidence.)

A. But it was not paid.

Q. Do you know where that note is?

A. I have it there.

339 Q. Do you mean that you have it with you, or where?

A. I have it in my possession secured.

Q. The question that I ask you is, have you that with you now?

A. No, sir; I have not it with me.

Q. Well, were not the conditions upon which that note was made payable, when the grant of the Cañon del Agua is confirmed by the Congress of the United States, and the grants of San Pedro and Cañon del Agua are surveyed by the authority of the United States, and the title of said property is made perfect by us to the said E. A. Cooley and others?

(In addition to the general objection heretofore agreed upon, defendant, by counsel, here objects to the question on the ground that the obligation itself is the best evidence.)

A. Yes, sir.

Q. Then in case that the title to this property that was sold by yourself and husband to these parties is made good, this note then becomes due, does it?

A. Yes, sir; the note is to be paid. It has been so many years ago it is hard to recollect.

Q. This agreement that was made at that time by yourself and husband with these parties, do you know whether it was ever recorded in the office of the recorder, probate clerk of the county of Santa Fé?

A. It was recorded.

Q. Is the paper that you have in your possession—does it have any endorsement upon it of ever having been recorded?

A. I do not know, sir; it may have.

Q. Well, are you not mistaken, and is it not a fact that that agreement never was recorded?

A. I am not mistaken, sir.

340 Q. You are certain that that is recorded here in the office of the recorder of the county of Santa Fé, are you?

A. I think so, sir.

Q. Do you know whether in July—on the 1st day of July, 1865, at the town of Real de San Francisco, that your husband, for himself and for you; and as president of the mining company entered into a written agreement with E. W. Eaton, for himself and for A. B. Carey and John C. McFarren, for the purchase of the Cañon del Agua and San Pedro grants?

A. Yes, sir; I do.

Q. Do you remember whether that agreement was acknowledged by your husband and E. W. Eaton before a justice of the peace by the name of Pedro Montoya?

A. I do not recollect, sir.

Q. Are you acquainted with a person by the name of Sylvester Davis?

A. Yes, sir.

Q. Do you remember whether he was present as a witness or not, at the time that agreement was made by your husband with Mr. Eaton?

A. I do not know, sir.

Q. Do you know where that agreement is that was made by them at that time?

A. My head has become very much heated.

Q. Can you read writing in Spanish yourself?

A. I do not know how to read sir; I do not know, sir, how to read; I wish that I did, it would probably be different.

Q. Well, is there not among your husband's papers, either in your possession or in the possession of your son Agustin Ramirez, this agreement which I have referred to, made upon the first day of July, 1865, between the parties whom I have named?

341 A. I do not know, sir.

Q. You mentioned in your examination that the Oroque was one of the boundaries of the grant sold by yourself and husband; which one of the boundaries was the Oroque, and what is the Oroque?

A. I cannot state positively as to the boundaries, nor do I know what the Oroque really is.

Q. When did you first hear and from whom did you first hear that the Oroque was one of the boundaries of the grant?

—. I understood it by the sale and from that it will be ascertained which boundary it is.

Q. Well, do you know that in none of those sales nor contracts made by yourself and your husband, or by himself, that the Oroque is never mentioned?

A. Well, I cannot state positively, but the document will show it; a woman cannot understand everything that is going on; I cannot read.

Q. Have you had any conversation within the last day or two with a man by the name of Sylvester Davis in regard to this grant?

A. No, sir.

Q. Do you know where Sylvester Davis lives now?

A. Yes, sir; I do.

Q. Where does he live?

—. In Galisteo.

Q. Did he come with your son and yourself here to Santa Fé, when you came here this time?

A. Yes, sir.

Q. He is here in town, is he not?

A. Yes, sir.

342 Q. Has he had conversation with your son and with yourself in regard to these boundaries?

A. Who could understand the things better than him? He has been there with us; I have only come here to state what I know, and I state it.

Q. But I ask you again if Mr. Sylvester Davis has had any conversation with yourself and your son, Agustin, in your presence, in regard to the boundaries of this grant?

A. No, sir.

Q. Do you know what was claimed by your husband at the time that he was making his sale of the Cañon del Agua grant, as being the north boundary of the grant? Or at least the boundary towards San Francisco?

A. My husband, as I have stated, sold the San Pedro grant, and it must be set forth in the deed.

Q. But do you know of your own knowledge what point it was on the north that your husband claimed was the boundary—the northern boundary—of the Cañon del Agua grant, on the side towards San Francisco?

A. I do not really understand which is the north or the west; but one of the boundaries was near the Real de San Francisco.

Q. What particular place was it near San Francisco, that was one of the boundaries?

A. I cannot possibly state, sir, I do not know.

Q. Do you know whether about a mile and a half from the town of Real de San Francisco, on the road going down towards San Pedro, that there is a road that turns to the west and goes to the Palo Amarillo planting ground?

A. Yes, sir; on the right-hand side.

343 Q. Well, in May, 1866, at the time that you and your husband made this agreement with Carey, Cooley and others, did not your husband, at that time, that these parties were present there, tell them that where that road turned off was the boundary of the Cañon del Agua grant; and that they had no business to come further towards the town?

A. I do not know, sir; the papers will show.

Q. But is it not true that at the time that Mr. Griffin was there, and Mr. Carey and Mr. Cooley and others, that there was quite a quarrel between them and your husband about that boundary?

A. I think not, sir.

Q. Well, do you know whether or not your husband at that time insisted that they should not come any further towards the town of San Francisco than to the fork of that road; and that if they went further they got what he did not sell them?

A. Well, if he said so he stated correctly, and he could not sell what did not belong to him.

Q. But do you know whether he said so or not, is what I am asking you.

A. Well, I cannot state what he said, I did not hear him make any statement to that effect. He could not possible have sold what did not belong to them.

Q. Do you know whether your husband at any time had or claimed a mine over near the Palo Amarillo?

A. I know nothing about that, I only know of the mine that we are speaking of, and that I have referred to. That is the one that he sold.

Q. Well, in 1864 and in the early part of 1865, did not your husband make locations of new mines and old mines, many of them near the town of San Francisco; some in the mountains and some of them over there by the Palo Amarillo?

344 A. What mines are to be found in the Palo Amarillo. You are asking so many questions that I have becomed confused. There are so many mines over there.

Q. Were you acquainted while you were at Real de San Francisco with a person by the name of Ricardo Campbell?

A. Yes sir.

Q. Do you know whether he ever worked any mines near San Francisco?

A. I know nothing of the kind. I do not know of his working any.

Q. Do you know whether your husband in 1867 had a suit brought against him by the Campbell heirs for a mine called La Providencia, near the town of San Francisco?

A. I do not know, sir.

Q. Well, do you know whether there was a mine called La Providencia, and claimed by the Campbell heirs, situated near this mine that you say was worked by your husband?

—. I know nothing about the business.

Q. Well, this agreement that you and your husband made on the 8th day of May, 1866, for the sale of the San Pedro and Cañon del

Agua grants; did you also agree for certain mines, a detailed description of which you said was given in the articles of agreement made by yourself upon the 22nd day of October, of the year 1865?

A. I heard nothing of the kind. I know nothing about it.

Q. Well, on the 19th day of May, 1866, did you and your husband make a deed for the Cañon del Agua and San Pedro grants to Carey, Cooley and others?

A. I think that the place you mention is within the boundaries stated in the sale made.

345 Q. Well, now, did you and your husband, shortly after that, in consideration of another thousand dollars paid, make a deed conveying certain houses and lots in the town of San Francisco?

A. Yes, sir.

On her redirect examination, by counsel for defendant, witness testified as follows:

Q. You do not pretend to remember the day of the month upon which these sales were made, do you?

A. I do not, sir; I have not got sufficient memory to do so.

Q. Do you remember whether more than one contract was made for the sale of that property to these parties? How many do you remember? One contract or more than one?

A. I cannot recollect exactly, my husband is the only one that could recollect a thing of that kind.

Q. The attorney for the plaintiff asked you about a contract made in May, at one time; and another one made in June—now, do you remember whether he first made a contract with Mr. Eaton, and then afterwards made another contract?

A. It has been so long ago that I cannot recollect all the business.

Q. Now, do you remember, about the time this trade was made, of your husband putting in a condition, that these parties to whom he sold were not to interfere with the people who lived in the town of San Francisco?

A. I suppose that he made a condition of that kind, my husband would certainly not molest any other parties.

Q. You stated that you had the obligation or contract upon which you would receive $12,000, when the title was perfected. Has

346 not all of that been paid but $2,000?

A. There is only one member of the company that owes anything.

Q. Well, was not each one of them to pay $2,000, apiece? They owe you $2,000, on that now don't they?

A. There is only one member of the company that owes anything, I think that is Mr. Cooley.

Q. Well, does not he owe you just $2,000 and interest?

A. Yes, sir.

Q. The other was paid to your husband, was it not?

A. Yes, sir.

Q. Now, do you remember anything about how much was paid at the time the contract was made, or was that paid to your husband?

A. I cannot recollect, sir; I received nothing, he received it.

her
MARIA ANTONIA X SANDOVAL.
mark.

Witness Maria Antonia Sandoval having heard and explained in the Spanish language her testimany by me, signed the same in my presence.

SAMUEL ELLISON.

347 DEFENDANTS' EX. "W."

TERRITORY OF NEW MEXICO, }
County of Santa Fé. }

(Stamp—2 cts.) (Stamp—2 cts.) (Stamp—2 cts.)

An agreement entered into this 23rd day of October, 1865, between Jose Serafin Ramirez in his own right and upon the part of Maria Antonia Sandoval, his wife and as president of the mining company of the Placer de San Francisco of New Mexico, resident of said county of Santa Fé and Territory of New Mexico, of the one part, and Corydon E. Cooley & Co., of the Territory of New Mexico, of the other part, witnesseth:

The said Jose Serafin Ramirez has bargained and sold and by these presents doth bargain and sell to the said Corydon E. Cooley & Co., his title and right to the San Pedro grant, as confirmed to him by Wm. Pelham, surveyor general of New Mexico, August 28, 1857, and subsequently confirmed by Congress with the following boundaries: On the south, the outlet of the arroyo of San Antonito; on the north, the outlet of the arroyo of Chimal; on the east the little mountain on a line with the Tuerto, and on the west, the one belonging and styled Sandia—all this without affecting the grant of San Antonito—together with the additional league granted to the south; the boundary being Las Lagunitas de los Indios, and La Ceja de las Facunditas;

Also the title to the grant of the Cañon del Agua, as recorded in the office of the surveyor general Dec'r 30, 1859, confirmed by the surveyor general, but not confirmed yet by Congress; also his right and title to a vein of silver in the Sandia mountain discovered and registered by him; also his right to a coal mine discovered and registered by him on public lands near the San Pedro grant; also a steam engine and all the machinery thereto belonging in the placer of San Francisco, except the grist-mill and appurtenances thereof; also all mines entered or unentered, discovered or
348 undiscovered, registered or unregistered within the limits of the grants of San Pedro and Cañon del Agua, without prejudice to the rights of other persons within said limits;

This bargain and sale is to be effective if the said Corydon E. Cooley & Co. shall pay or cause to be paid to the said Ramirez and wife, on or before the first day of May, 1866, the sum of forty thousand dollars; upon the fulfillment of which and not before, a title

is to be made and possession given in conformity with this agreement; and the use and occupancy of said property and the products of the same with all growing crops are to belong to the said Ramirez until said payment is made;

And if the said Corydon E. Cooley & Co. fail to pay said sum of forty thousand dollars, as above stipulated, then and in that case the said Corydon E. Cooley is bound and obligated in accordance with his obligation of even date herewith to pay the said Ramirez the sum of fifteen hundred dollars ($1500.00) as liquidated damages for the failure to comply with this agreement; and the same is then to be null and void.

Witness our hands and seals this day and date first above written.

MARI- ANTOÑIA SANDOVAL. [SEAL.]
JOSE SERAFIN RAMIREZ. [SEAL.]
C. E. COOLEY & CO. [SEAL.]
A. B. CAREY. [SEAL.]

Attest:

CHARLES BLUMNER.
J. M. GALLEGOS.

$1500.00. SANTA FÉ, N. M., *October* 23*d*, 1865.

On the first day of May, 1866, I promise to pay to Serafin Ramirez or order the sum of fifteen hundred dollars, should Corydon E. Cooley & Co., fail to pay him on that day $40000.00, according to agreement of even date with this obligation.

349

C. E. COOLEY.

NOTE.—There are several houses and lots in the plaza of San Francisco which are not mine and are not included in this sale: But the following houses and lots are mine, and are included, to wit: The mill-house, the house I live in, the house and lot purchased of Juan Romero; also the one purchased of Vicente Romero, that belonged to Blas Chavez; the lot that was formerly the property of Jose del Valle; also the lot and lands which belonged to Manuel Lucero; the lot where the billiard-house was built, and the lot and lands of Antonio Salazar, the captive.

Also my house and church in San Pedro, excepting all movibles of the same and the plaza of Alamitos, are likewise conveyed.

It is further understood that the charter granted to me by the legislative assembly of New Mexico to form a company has never taken effect, and no organization has been made under said charter and all my rights under said charter are included in this sale.

It is further understood that the expressions contained herein "without affecting the donation of San Antonito" means without affecting the donation of San Antonito in any manner.

JOSE SERAFIN RAMIREZ. [SEAL.]
MARI- ANTONIA S-NDOBAL. [SEAL.]
C. E. COOLEY & CO. [SEAL.]
A. B. CAREY. [SEAL.]

Witness-:

J. HOWE WATTS.
JOHN WM. ELLIS.

UNITED STATES OF AMERICA,
Territory of New Mexico.

Before me the undersigned, clerk of the United States first judicial district court for said Territory, personally appeared Jose
350 Serafin Ramirez and C. E. Cooley, both personally known to me to be the identical individuals who executed the foregoing articles of agreement and acknowledged that they signed and sealed the same on the day and year therein set forth and for the purposes and designs therein expressed as their volu-tary act and deed.

In testimony whereof I hereunto set my hand and the seal of said court at Santa Fé, this 14th day of November, A. D. 1865.

[SEAL.]

SAM'L ELLISON,
Clerk 1st Jud. Dist. Court, N. M.

UNITED STATES OF AMERICA,
Territory of New Mexico.

I, W. F. M. Arny, secretary, Territory of New Mexico do hereby certify that Jose Serafin Ramirez of the first part and Corydon E. Cooley & Co. of the second part to the foregoing contract are personally known to me and have appeared before me and acknowledged the foregoing to be their act and deed executed in full faith and that their signatures thereto are genuine.

In testimony whereof I have hereunto signed my name and affixed my seal of office at Santa Fé, New Mexico, this 24th day of October, 1865.

[SEAL.]

W. F. M. ARNY,
Secretary, Territory of Mew Mexico.

(Stamp 5 cts.)

Enregistrado Noviembre 14, A. D. 1865.

MIGUEL E. PINO,
Escribo. de la Corte de Pbas.

TERRITORIO DE NUEVO MEJICO,
Condado de Santa Fé.

Certifico yo el abajo firmado, Escribano de la Corte de Pruebas en y por el condado y territorio antedichos que la ante-
351–356 cendent copia de documento, es una copia correcta y verdadera, copiada del Libro letra "D" paginas 124–125–126 y 127.

En testimonio de lo cual pongo mi nombre y sello oficial, en Santa Fé, N. M., este dia 2 de Abril, A. D. 1883.

[SELLO.]

ATANASIO ROMERO,
Escribano de la Corte de Pruebas.

* * * * * * *

357 Know all men by these presents, that whereas on the twenty-second and twenty-third days of October, one thousand eight hundred and sixty-five, in the county of Santa Fé, in the Territory of New Mexico, I, Jose Serafin Ramirez, for myself and for

the Mining Company of the Placer de San Francisco of New Mexico, and as its president, and Maria Antonia Sandoval, my wife, as parties of the first part, entered into a written agreement with Corydon E. Cooley and Company as party of the second part, by which the said parties of the first part, sold to said parties of the second part, who was therein designated as C. E. Cooley and Company, all our title and right to the San Pedro grant as confirmed by William Pelham, surveyor general of New Mexico August twenty-eight, one thousand eight hundred and fifty-seven, and subsequently confirmed by Congress. Also the title and right to the grant of the Cañon del Agua, as recorded in the office of the surveyor general, December thirtieth, one thousand eight hundred and fifty-nine, confirmed by the surveyor general, but not yet confirmed by Congress; also certain coal, gold and silver mines, houses, machinery, etc., and said property being described in articles of agreement bearing date October twenty-second and twenty-third, one thousand eight hundred and sixty-five, and for which property payment is to be made on or before the first day of May, one thousand eight hundred and sixty-six.

Therefore, be it known that I, Jose Serafin Ramirez for myself and for the mining company of the Placer de San Francisco of New Mexico and as its president, and Maria Antonia Sandoval, my wife, parties of the first part, do hereby and by these presents extend the time on which payment for said property is to be made from the first day of May one thousand eight hundred and sixty-six,
358 to the first day of June one thousand eight hundred and sixty-six, and if on or before the first day of June, one thousand eight hundred and sixty-six payment for the property described in articles of agreement bearing date October twenty-second and twenty-third, one thousand eight hundred and sixty-five, the latter being duly acknowledged before W. F. M. Arny, secretary of the Territory of New Mexico and recorded in the office of the recorder of deeds of Santa Fé county, Territory of New Mexico, be made as therein acquired, then the said parties of the first part by these presents are bound in the value of the property above referred to, to give possession and good and sufficient deeds, which we, the parties of the first part will forever warrant and defend unto the parties of the second part to this agreement, and who are named as follows: John C. McFerran, U. S. A. of Washington, D. C.; Asa B. Carey, U. S. A., now of Santa Fé, N. M.; Charles W. Kitchen, of San Miguel county, N. M.; Hampton B. Deman of New Mexico, Charles S. Hinckley of New Mexico, and Corydon E. Cooley, of New Mexico.

JOSE SERAFIN RAMIREZ. [SEAL.]
MARI-ANTONIA SANDOVAL. [SEAL.]

Signed, sealed, and acknowledged and delivered in presence of:
S. C. STAPLES.
J. C. McKEE.

(Stamp 5 cents.) (Stamp 5 cents.)
(Stamp 5 cents.) (Stamp 5 cents.)

COUNTY OF SANTA FÉ, }
Territory of New Mexico. }

I, Pedro Montoya, justice of the peace in and for the precinct No. 7, county of Santa Fé, Territory of New Mexico, do hereby certify that Jose Serafin Ramirez and Maria Antonia Sandoval this
359 day came before me, and subscribed their names to the foregoing declaration, and for the purposes therein mentioned and acknowledged the same to be their act.

Witness my hand and seal this seventh day of March 1866.

[SEAL.] PEDRO MONTOYA,
Juez de Paz.

(Stamp 5 cents.)

Enregistrado hoy 10 de Marzo, A. D. 1866.

MIGUEL E. PINO,
Esco. de la Corte de Pruebas.

TERRITORIO DE NUEVO MEJICO, }
Condado de Santa Fé. }

Certifico yo el abajo firmado, escribano de la corte de pruebas, en y por el condado y territorio ante dichos que la antecedente copia de documento es una copia correcta y verdadera sacada del libro letra "D" paginas 180 y 181.

En testimonio delo cual pongo mi nombre y sello oficial, en Santa Fé, N. M., este dia 2 de Abril, A. D. 1883.

[SEAL.] ATANASIO ROMERO,
Escribano de la Corte de Pruebas.

(Endorsement:) 621.—Ex. L. 3 K.—Filed April 10, 1883, Sam'l Ellison, special examiner.—Filed in my office this 8th day of August, 1884. C. M. Phillips, clerk, by Frank Martin, deputy.

360 DEFENDANTS' EX. "X."

Know all men by these presents:

That whereas on the 23d day of October, 1865, at the county of Santa Fé, in the Territory of New Mexico, Jose Serafin Ramirez, for himself and for the Mining Company of the Placer de San Francisco of New Mexico, and as its president, and Maria Antonia Sandoval, his wife, as parties of the first part, entered into a written agreement with Corydon E. Cooley, as party of the second part, by which said parties of the first part sold to said party of the second part, who was therein designated as C. E. Cooley & Co., all their title and right to the San Pedro grant confirmed to said Ramirez by William Pelham, surveyor general of New Mexico, August 28th 1857, and subsequently confirmed by Congress, with the following boundaries: "On the south, the outlet of the Arroyo de San Antonito; on the north, the outlet of the arroyo of Chimal; on the east, the little mountain, in a line with the Tuerto, and on the west, the one belonging to and styled Sandia. All this without affecting the grant of San Antonito, together with additional league granted to the

south. The boundary being Las Lagunitas de los Indios and La Ceja de las Facunditas. Also the title to the grant of the Cañon del Agua, as recorded in the office of the surveyor general, December 30th 1859, confirmed by the surveyor general, but not confirmed yet by Congress: Also his right and title to a vein of silver in the Sandia mountain, discovered and registered by him. Also his right to a coal mine discovered and registered by him on public lands near the San Pedro grant. Also a steam-engine and all the machinery thereto belonging in the placer of San Francisco, except the grist-mill and appurtenances thereof. Also all mines entered or unentered, discovered or undiscovered, registered or unregistered, within the limits of the grants of San Pedro and Cañon del Agua, without prejudice to the rights of other persons, within said limits. Also the following lots of land and houses situated thereon; the lot and house known as the Mill house; the house and lot of my residence; also the house and lot purchased of Juan Romero; also the house and lot purchased of Vicente Romero, formerly belonging to Blas Chavez; the lot formerly known as the lot of Jose del Valle; also the lot and land formerly belonging to Manuel Lucero; also the lot on which the billiard-house was built; also the lot and land formerly belonging to Antonio Salazar, the captive; also my house and church at San Pedro, except all the movables of the same and the plaza of Alamitos. It is further understood that the charter granted to me by the legislative assembly of New Mexico to form a company has never taken effect and no organization has been made under said charter; and all my right under said charter are included in this sale. It is further understood that the expression contained herein "without affecting the donation of San Antonito" means "without affecting San Antonito in any manner."

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And whereas said sale was made by said parties of the first part for themselves, and by said Jose Serafin Ramirez, for said Mining Company of the Placer de San Francisco of New Mexico and its president, on condition that said party of the second part should pay to the said parties of the first part on or before the first of May, 1896, the sum of forty thousand dollars in full payment for all said property above described, at the date of which payment possession was to be delivered by said parties of the first part, and on the further consideration and condition that in case said party of the second part failed to pay said sum at the date named he should forfeit and pay to said parties of the first part as liquidated damages, the sum of fifteen hundred dollars, for which said sum he gave his promissory note payable in case of such failure to the said parties of the first part.

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Which said agreement was signed by said parties of the first part and by C. E. Cooley & Co., A. B. Carey and to which is appended a note signed by said Ramirez to the effect that the words in said agreement "without prejudice to the rights of other persons in said limits" means "without prejudice to the rights of persons owning houses and lots in the Plaza de San Francisco Real del Tuerto, they owning no interest whatsoever in the mines or grants."

And which agreement was on the 24th day of October, 1865 duly acknowledged before W. F. M. Arny, secretary of the Territory of New Mexico, and is recorded in the office of the recorder of deeds of Santa Fé county, in said Territory.

And whereas, on the 22d day of October, 1865, another agreement was entered into by the parties to the agreement above described, which was duly executed and acknowledged before the clerk of the United States district court of the first district of New Mexico, but which has not been recorded, which said last-named agreement is of the same substance and effect with the agreement above fully set forth.

Now, therefore, the undersigned Corydon E. Cooley doth declare that he made the contracts of purchase of the grants and properties described in said agreements in trust for himself and others, whose names and respective interests are as follows: and who are referred to and included with himself in the name of C. E. Cooley & Company, used in the description of parties to said agreement, to wit: John C. McFerran, U. S. Army of Washington, D. C., Asa B. Carey, U. S. Army, now of Santa Fé, New Mexico, Charles W. Kitchen, of San Miguel county, New Mexico, Hampton B. Deman, of New Mexico, Charles S. Hinckley, of New Mexico, each of whom together with him the said Corydon E. Cooley, has one-sixth
363 interest in said purchases.

It having been heretofore understood and agreed between the signer hereof and persons above named that each of the persons herein declared to be interested shall on or before the date when the said forty thousand dollars falls due, contribute his ratable proportion thereof or forfeit to those who join in making the payment his interest in the purchase; and that in case the property is not paid for and the title acquired from said Ramirez and wife by or for any of the parties interested in said contracts of purchase or their assigns, then each shall be bound to pay his ratable proportion of said liquidated damages, and that if title is acquired under said contracts, the parties interested shall be entitled to have conveyances made by said Ramirez and wife to them as tenants in common. And that in every event each shall be bound for his ratable proportion of the expenses incurred in making and concluding the purchase.

In witness whereof the said C. E. Cooley has hereunto set his hand and seal to this declaration of trust at Washington, D. C., this eighth day of February, 1866.

CORYDON E. COOLEY. [SEAL.]
A. B. CAREY. [SEAL.]

Signed, sealed, acknowledged and delivered in presence of:
R. J. MEIGS.
JOE V. MEIGS.
JOS. LEGRUND.

Witness signature of A. B. Carey,
WM. B. MOORES.

(Stamp—$20.00)

DISTRICT OF COLUMBIA, *To wit:*

I, Return J. Meigs, clerk of the supreme court of the District of Columbia, hereby certify, that Corydon E. Cooley, this day comes before me in my office and subscribes his name to the foregoing declaration of trust, and acknowledges the same to be his act
364 and deed for the purposes therein mentioned, the said court being a court of record.

Witness my hand and the seal of said court, at office, in the city of Washington, District of Columbia, February 8, 1866.

[SEAL.] R. J. MEIGS, *Clerk.*

(Stamp—5 cents)

TERRITORY OF NEW MEXICO, }
County of Santa Fé. }

I, William B. Moores, notary public in and for the county of Santa Fé, Territory of New Mexico, do hereby certify that A. R. Carey, this day comes before me, in my office, and subscribed his name to the foregoing declaration of trust, and act and deed for the purposes therein mentioned.

Witness my hand and notarial seal, at Santa Fé, N. M., March 10th, 1866.

WM. B. MOORES,
Notary Public.

[SEAL.]

(Stamp—5 cents)

Protocolado Marzo 10, A. D. 1866, a las dos de la tarde. Enregistrado Marzo 10, A. D. 1866.

MIGUEL E. PINO,
Escribano de la Corte de Prueba.

TERRITORIO DE NUEVO MEJICO, }
Condado de Santa Fé. }

Certifico, yo, el abajo firmado, escribano de la corte de pruebas en y por el Condado y Territorio antedichos, que la antecedente copia de documento es una copia correcta y verdadera, copiada del libro letra "D," paginas 181, 182, 183 y 184.

En testimonio de lo cual pongo mi nombre y sello oficial
365 en Santa Fé, N. M., este dia dos de Abril, A. D. 1883.

ATANASIO ROMERO,
Escribano de la Corte de Prueba.

[SEAL.]

366 This indenture, made this nineteenth day of May, A. D. one thousand eight hundred and sixty-six, between Jose Serafin Ramirez and Maria Antonia Sandoval, his wife, of the county of Santa Fé, Territory of New Mexico, parties of the first part, and John C. McFerran, Asa B. Carey, of the United States Army, Corydon E. Cooley, Charles W. Kitchen, Charles S. Hinckley and Hampton B. Deman, of the Territory of New Mexico, joint and equal owners, parties of the second part, witnesseth:

That the said parties of the first part for and in consideration of the sum of thirty thousand dollars ($30000.00) to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, conveyed and confirmed, and by these presents do grant, bargain, sell, convey and confirm unto the said parties of the second part and to their heirs and assigns forever all the following-described tracts of land situated in the counties of Bernalillo and Santa Fé, Territory of New Mexico, bounded and described as follows, viz: The tract of land lying east of the Sandia mountain and west of the Tuerto mountain, known as the San Pedro grant, together with and including the additional one league to the south thereof, granted to Jose Serafin Ramirez and others by the Mexican government by decree of the governor of the political department of New Mexico, dated November twenty-ninth, A. D. one thousand eight hundred and forty-five; the papers constituting the grants and titles and the deeds of conveyance from the other grantees to the said parties of the first part to said tracts of land, being on file and recorded in the office of the United States surveyor general for the Territory of New Mexico, and known and recorded therein as file No. forty-four (44), reported No. fourteen (14) approved by the surveyor general of New Mexico, Au-
367 gust twenty-eight, one thousand eight hundred and fifty-seven, and confirmed by act of Congress of the United States, approved June 21st A. D. one thousand eight hundred and sixty. Bounded on the north, by the outlet of the arroyo of Chimal; on the south, by the outlet of the arroyo of San Antonito; on the east, by a little mountain on a line with the Ojo del Tuerto, and on the west, by the mountain known and styled Sandia.

The boundaries of the additional league to the south of the original grant being as follow, viz: On the north, west and east, the same as those set forth in the petition of Jesus de Miera and Ramon Gurule for the original grant of San Pedro, dated Algodones, New Mexico, August 16, A. D. 1839, and on the south, Las Lagunitas de los Indios and La Ceja de las Facunditas.

Also all that tract of land known as the Cañon del Agua grant, situated in the county of Santa Fé, Territory of New Mexico, lying between the San Lazaro and San Isidro mountains and east of the San Pedro grant, granted to Jose Serafin Ramirez by the Mexican government by decree of the departmental assembly and governor of the political and military government of the department of New Mexico, dated Santa Fé, February fourteenth, A. D. one thousand eight hundred and forty-four. The papers constituting the grant and title to said tract of land being on file and recorded in the office of the United States surveyor general for the Territory of New Mexico and known and recorded therein as file No. seventy (70), reported No. forty (40), approved by the surveyor general of the Territory of New Mexico, December thirtieth, A. D. one thousand eight hundred and fifty-nine. Bounded and described as follows,
viz: On the north and northwest, by the road commencing
368 at the placer of San Francisco and leading to the Palo Amarillo; on the south, by the spring of the Cañon del Agua; on

the east, by the summit of the Tuerto mountain; on the west, by the Palo Amarillo.

Together with all mines, placers, veins or lodes, containing precious stones, ores and metals, discovered or undiscovered, registered or unregistered, included in or being on the above-described tracts of land or grants. Together with all and singular the tenements hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and also all the estate, right, title and interest, dower and right of dowers, property, possession, claim and demand whatsoever, as well in law as in equity of the said parties of the first part of, in or to the above-described premises and every part or parcel thereof, with the appurtenances.

To have and to hold, the above-described premises with the appurtenances unto the said parties of the second part, their heirs and assigns to their own proper use, benefit and behoof forever.

And the said parties of the first part for themselves and their heirs executors and administrators do covenant and grant and agree to and with the said parties of the second part, their heirs and assigns that the said parties of the first part at the time of the sealing and delivery of these presents were lawfully seized in their own right, of a good absolute and indefeasible estate of inheritance in fee-simple of and in all and singular the above granted and described premises, with the appurtenances and the said parties of the second part, their heirs and assigns shall and may at all times hereafter peaceably and quietly have, hold, use, occupy, possess and enjoy the above-granted premises and every part and parcel thereof with the appurtenances without any let
369 suit, trouble, molestation, eviction, or disturbance of the said parties of the first part, their heirs or assigns, or of any other person or persons, lawfully claiming or to claim the same, and the same are now free, clear, discharged and unencumbered of and from all former and other grants, titles, charges, estate, judgments, taxes, assignments and encumbrances of what nature or kind soever. And also that the said parties of the first part and their heirs and all and every person or persons whomsoever, lawfully or equitably deriving any estate, right, title and interest of in or to the herein-granted premises by, from or under, or interest for them shall and will at all times hereafter, upon the request of the said parties of the second part, make, do and execute, or cause to be done, made and executed, all and each further and lawful and reasonable acts, conveyances and assurances in the law for the better and more effectually vesting and confirming the premises herein granted or so intended to be in and to the said parties of the second part, their heirs and assigns forever. And to the said parties of the first part for themselves, their heirs and assigns the above-described and hereby granted sold and released premises, and every part and parcel thereof, with the appurtenances, unto the said parties

Revenue stamp $10.00.

Revenue stamp $10.00.

Revenue stamp $10.00.

of the second part, their heirs and assigns against the said parties of the first part and their heirs, and against all and every person or persons whomsoever, lawfully claiming or to claim the same, shall and will warrant and forever defend.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

JOSE SERAFIN RAMIREZ. [SEAL.]

MARIA ANTONIA her x mark SANDOVAL. [SEAL.]

In presence of—
CHARLES EMIL WESCHE.
S. E. HOFFMA.
AGUSTIN RAMIREZ.

370 TERRITORY OF NEW MEXICO, }
County of Santa Fé. }

Be it remembered that on the 19th day of May, A. D. 1866, before me the subscriber clerk of the probate court in and for said county of Santa Fé, personally appeared Jose Serafin Ramirez and Maria Antonia Sandoval, his wife, to me personally known to be the individuals described in and who executed the above deed and severally acknowledged that they had executed the same, and the said Maria Antonia Sandoval, after I had made her acquainted with and explained to her the contents of the said deed, on an examination separate and apart from her said husband, acknowledged the same to be her act and deed and that she executed the same voluntarily and without compulsion or illicit influence of her said husband.

Witness my hand and the seal of the probate court of the county and Territory aforesaid, the day and year first above written.

[SEAL.] MIGUEL E. PINO,
Clerk of Probate Court.

(Stamp—5 cents.)

TERRITORIO DE NUEVO MEJICO, }
Condado de Santa Fé. }

Certifico yo el abajo firmado, escribano de la Corte de Pruebas en y por el condado y territorio antedichos, que la antecedente copia de documento es una copia correcta y verdadera, copiada del libro letra "D" paginas 210, 211 y 212.

En testimonio de lo cual pongo mi nombre y sello Sello oficial en Santa Fé N. M., este dia 2 de Abril, A. D. 1883.

[SEAL.] ATANASIO ROMERO,
Escribano de la Corte de Pruebas.

371 This indenture made this 19th day of May, A. D. 1866, between Jose Serafin Ramirez and Maria Antonia Sandoval, his wife, of the county of Santa Fé, Territory of New Mexico, parties of the first part, and John C. McFerran, Asa B. Carey, of the United States Army, Corydon E. Cooley Charles W. Kitchen, Charles S.

Hinckley and Hampton B. Deman, joint and equal owners, parties of the second part, witnesseth:

That the said parties of the first part for and in consideration of the sum of one thousand dollars ($1000.00), to them paid by the said parties of the second part, the receipt whereof is hereby acknowledged, do grant, bargain, sell and convey unto the said parties of the second part, all the following-described property, viz: situated in the placer de San Francisco, county of Santa Fé, Territory of New Mexico. The house and lot used as and known as the mill house; the house and lot situated south of the hill house and used as a stable; the house and lot purchased of Vicente Romero, conveyed to grantors by deed dated January 19th, A. D. 1864; the house and lot purchased of Juan Romero, conveyed to grantors by deed dated April 15th, A. D. 1865; the house and lot situated to the northwest and near the mill house, now occupied by the grantors and purchased of Manuel Romero; the house and lot purchased of Isabel Martinez, by deed dated November 10th, A. D. 1865; the lot formerly owned by Manuel Lucero and conveyed by deed to grantors; the lot formerly owned by Jose del Valle and conveyed by deed to grantors; the lot on which the house known as the billiard-room was situated; the lot formerly owned by Antonio Salazar "the captive" and conveyed by deed to grantors. Together with all the right, title, interest or claim we may have or might have had either by right or pre-emption or other conveyance in and to the land upon which the said buildings are
372 situated. To have and to hold the above granted and bargained premises with the appurtenances thereunto belonging unto the said parties of the second part, their heirs and assigns forever, and the said parties of the first part for themselves, their heirs and assigns covenant with the said parties of the second part, their heirs and assigns that at and until the ensealing of these presents they are well seized of the premises and have good right and lawful authority to sell and convey the same and that they are free from all encumbrances whatsoever and the said parties of the first part by these presents bind themselves, their heirs and assigns to warrant and forever defend the above granted and bargained premises unto the said parties of the second part, their heirs and assigns against all claims and demands whatsoever, except the United States.

In witness whereof we have hereunto set our hands and seals the day and year first above written.

JOSE SERAFIN RAMIREZ. [SEAL.]

her
MARIA ANTONIA x SANDOVAL. [SEAL.]
mark.

In presence of:

CHARLES EMIL WESCHE.
S. E. HOFMA.
AGUSTIN RAMIREZ.

TERRITORY OF NEW MEXICO, }
County of Santa Fé. }

Be it remembered that on the 19th day of May, A. D. 1866, before me the subscriber clerk of the probate court in and for said county of Santa Fé, personally appeared Jose Serafin Ramirez and Maria Antonia Sandoval, his wife, to me personally known to be the individuals described in and who executed the above deed and severally acknowledged that they had executed the same, and the
373 said Maria Antonia Sandoval, after I had made her acquainted with and explained to her the contents of the said deed on an examination separate and apart from her said husband, acknowledged the same to be her act and deed and that she executed the same voluntarily and without compulsion or illicit influence of her said husband.

Witness my hand and the seal of the probate court of the county and Terrritory aforesaid, the day and year first above written.

MIGUEL E. PINO,
Clerk of Probate Court.

(Stamp—5 cents.)

Enregistrado el antecedente documento, hoy 19 de Mayo de 1866.

MIGUEL E. PINO,
Esco. de la Corte de Pruebas.

TERRITORIO DE NUEVO MEJICO, }
Candado de Santa Fé. }

Certifico yo el abajo firmado, Escribano de la Cortes de Pruebas en y por el condado y territorio antedichos, que la antecedente copia de documento es una copia correcta y verdadera, copiada del libro letra "D" paginas 213 y 214.

En testimonio de lo cual pongo mi nombre y sello oficial en Santa Fé, N. M., este dia dos de Abril, A. D. 1883.

[SEAL.]

ATANASIO ROMERO,
Escribano de la Corte de Pruebas.

374 Know all men by these presents that we, Jose Serafin Ramirez and Maria Antonia Sandoval, his wife, of the county of Santa Fé, Territory of New Mexico, parties of the first part, for and in consideration of the sum of one thousand dollars ($1000.00) to them in hand paid by John C. McFerran, Asa B. Carey, of the United States Army, Corydon E. Cooley, Charles W. Kitchen, Charles S. Hinckley and Hampton B. Deman, of the Territory of New Mexico, joint and equal owners, parties of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold and conveyed and by these presents do grant bargain, sell and convey unto the said parties of the second part, all our right, title, interest and claim as discoverers, operators and owners in and to the following-described mines on public lands located and holden under the act of the legislative assembly of the Territory of New Mexico, approved January 18th, A. D. 1865, viz: fifteen hundred feet linear measure on a vein

of coal, situated between the San Dazaro and Tuerto mountains in the cañon above the Ojo del Tuerto, in the county of Santa Fé, Territory of New Mexico, discovered and registered according to law by Jose Serafin Ramirez, Agustin Ramirez, Manuel C. y Lopez and Melquiadez Ramirez on the 18th of March A. D. 1866. Registered in Book "A," pages 81 and 82 in the office of the clerk of the probate court for Santa Fé county; also fifteen hundred feet linear measure on a vein of silver, situated in the Cerro Alto de las Huertas, in the county of Santa Ana, and Territory of New Mexico, registered according to law by Jose Serafin Ramirez, Agustin Ramirez, Manuel C. y Lopez and Felipe Garcia, July 1st A. D. 1865, registered about the 14th of May, A. D. 1866 in the book kept for that purpose in the office of the clerk of the probate
375 court for the county of Santa Ana. To have and to hold the above granted and bargained mines with the appurtenances thereunto belonging or in anywise appertaining and the rents, issues and profits thereof unto the said parties of the second part, their heirs and assigns to their own proper use and behoof forever. And the said parties of the first part covenant with the said parties of the second part that they have a good right and lawful authority to sell and convey the said mines and they have never disposed of them or any part thereof to any other person or persons whomsoever.

In witness whereof we have hereunto set our hands and seals the day and year first above written.

JOSE SERAFIN RAMIREZ. [SEAL.]

her
MA. ANTONIA x SANDOVAL. [SEAL.]
mark.

In presence of:

CHARLES EMIL WESCHE.
S. E. HOFFMA.
AGISTIN RAMIREZ.

(Stamp—$1.00.)

TERRITORY OF NEW MEXICO, }
County of Santa Fé. }

Be it remembered that on the 19th day of May, A. D. 1866, before me the subscriber, clerk of the probate court in and for said county of Santa Fé, personally appeared Jose Serafin Ramirez and Maria Antonia Sandoval, his wife, to me personally known to be the individuals described in and who executed the above deed and severally acknowledged that they had executed the same, and the said Maria Antonia Sandoval, after I had made her acquainted with and explained to her the contents of said deed, on an examination separate and apart from said husband, acknowledged the same to be her act and deed, and that she executed the same voluntarily and without compulsion or illicit influence of her said husband.

Witness my hand and the seal of the probate court of the
376 county and Territory aforesaid the day and year first above written.

[SEAL.] MIGUEL E. PINO,
Esco. de la Corte de Pruebas.

(Stamp—5 cents.)

Certifico que el original del presente documento fue protocolado en esta oficina para su registro a las cinco de la tarde del dia 19 de Mayo, y que el dia 22 de dicho mes y ano fue enregistrado por mi en Santa Fé, Mayo 22, A. D. 1866.

MIGUEL E. PINO,
Esco. de la Corte de Pruebas.

TERRITORIO DE NEUVO MEJICO, }
Condado de Santa Fé. }

Certifico yo el infrascrito, Escribano de la Corte de Pruebas en y por el condado y Territorio antedichos, que la antecedente copia de documento es una copia correcta y verdadera, sacada del libro letra "D" paginas 214, 215 y 216.

En testimonio de lo cual pongo mi nombre y sello oficial, en Santa Fé, N. M., este dia 2 de Abril, A. D. 1883.

[SEAL.] ATANASIO ROMERO,
Escribano de la Corte de Pruebas.

(Endorsement:) 621.—Ex. K. 4—Filed April 10, 1883, Sam'l Ellison, special examiner. Filed in my office this 8 day of August, 1884. C. M. Phillips, clerk, by Frank Martin, deputy.

377 And be it further remembered that thereafter, to wit, on the 10th day of May A. D., 1900, the court rendered its decision in the words and figures following, to wit:

MARIANO F. SENA
vs.
UNITED STATES, AMERICAN TURQUOISE Company, J. P. McNulty, *et al.* } No. 278. Jose de Leyba Grant.

This cause having been at the present term tried and submitted and taken under advisement by the court upon evidence both oral and documentary and upon argument by counsel for both plaintiff and defendants and the court upon consideration and examination of said cause being sufficiently advised in the premises doth find that said petition for the confirmation of the private land claim called the José de Leyba grant, being archive number four hundred and forty-one (441) in the office of the surveyor general of New Mexico, the same being described as situate in the county of Santa Fé, Territory of New Mexico and bounded on the north by the lands of Captain Sebastian de Vargas, on the east by the San Marcos road, on the south by an arroyo called Cuesta del Oregano and on the west by the land of Juan Garcia de las Rivas has not been

sustained by satisfactory proof and that the title so asserted to the tract of land alleged to have been granted to Jose de Leyba by the then King of Spain by Governor and Captain General Juan Domingo de Bustamente on the twenty-fifth (25th) day of May A. D. 1728, is of no validity and is not entitled to confirmation by this court.

It is therefore ordered, adjudged and decreed that the said claim to the said tract of land be and the same is hereby rejected and said petition dismissed.

378 In the U. S. Court of Private Land Claims, Santa Fé, New Mexico, April Term, 1900.

MARIANO F. SENA *versus* UNITED STATES. } No. 278. Jose de Leyba Grant.

The title papers and documents produced from the archives of the surveyor general's office and received in evidence in this case show that the grant in question was made to Jose de Leyba by the governor and captain general, Bustamante, in the name of the King of Spain in the year 1728, and that possession was formally given to the grantee of the land petitioned for and granted.

The evidence as to settlement and occupation of the tract purporting to have been granted, continuity of possession, cultivation, residence, improvement, claim of ownership, notoriety of the grant, and knowledge of its existence in the community by the oldest inhabitants now living, is so vague contradictory, and uncertain as to be almost wholly wanting.

The question of boundaries of the tract claimed was one of serious contention upon the hearing of the case, involving as it does the patent titles and other conflicting interests of adverse claimants to lands embraced with- the boundaries claimed under the grant title.

Upon consideration of the state of facts presented, the court has reached a conclusion which may be briefly stated. The first question arising is, What is the character of this grant, whether perfect or imperfect? It is claimed by petitioner to be a perfect grant, and therefore could be brought into this court at any time, or not at all, under the statute. Inasmuch as the grant was made at the date mentioned, 1728, it falls under the requirements of the royal ordinance of 1754, which provides that all grants made subsequent to 1700, unless already confirmed by royal order of the King, or his viceroys, or
379 presidents of the audiencias of the several districts embracing the lands granted, should apply for such confirmation as a prerequisite to validity. There is no evidence in this case, either by the documents presented or otherwise, that these requirements of the ordinance of 1754 were ever complied with. Nor is there in the nature of the case or upon any of the facts in evidence any grounds that will justify a presumption of such compliance with the requirement for confirmation. It therefore follows that this grant must be held to be not a perfect but an imperfect grant. And as such im-

perfect grant, it is subject to the provision of the act creating this court, requiring the petition for confirmation herein to be filed within two years, but since this case was not brought or filed in this court until the present year, we must hold that it is barred by this statute of limitations, and hence must dismiss the case for want of jurisdiction under the said statute.

WILBUR F. STONE,
Associate Justice.

380 And be it further remembered that thereafter, to wit, on the 5th day of November, A. D. 1900, a petition and an order were filed with the clerk of said court, which petition and order are in the words and figures following, to wit:

381 *Appeal and Allowance.*

UNITED STATES OF AMERICA, *ss:*

Court of Private Land Claims, Santa Fé District.

MARIANO F. SENA, Plaintiff and *Appellee*,
vs.
THE UNITED STATES, Defendant- and Appellees.

The above-named plaintiff considering himself aggrieved by the decree entered on the tenth day of May 1900, in the above-entitled proceeding, doth hereby appeal from said decree to the Supreme Court of the United States, and he prays that this appeal be allowed, and that a transcript of the record and proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

(Signed) H. S. CLANCY,
Attorney — Appellant.

And now, to wit: on 3d day of November 1900, it is ordered that the appeal be allowed as prayed for.

(Signed) WILBUR F. STONE,
Asso. Justice.

382 UNITED STATES OF AMERICA,
Territory of New Mexico.

I, the undersigned, clerk of the United States Court of Private Land Claims, do hereby certify that the foregoing is a full, true and perfect copy of the record and proceedings had in the cause lately pending in said court wherein Mariano F. Sena was petitioner and The United States of America, *et al.*, were respondents, together with all exhibits introduced and the opinion of the court, as the same remain of record and on file in my office. Except the record of the marriage of Jose de Leyba and the record of the baptism of Salvador Antonio de Leyba copies of which were not filed in this office.

Witness my hand and the seal of said court at Santa Fé, New Mexico, this 31st day of December, A. D. 1900.

[Seal Court of Private Land Claims, Santa Fé, New Mexico.]

JAMES H. REEDER, *Clerk*,
By IRENEO L. CHAVES, *Deputy*.

383 In the Supreme Court of the United States.

MARIANO F. SENA
vs.
UNITED STATES OF AMERICA ET AL.

It is hereby stipulated and agreed that the two papers hereto attached which are certified by the clerk of the Court of Private Land Claims to be true copies respectively of the original and translation of the certified copy of the record of the marriage of Joseph de Leyba and of the original and translation of the certified copy of the baptism of Salvador Antonio Leyba, are copies and translations of papers offered in evidence on the trial of the above-entitled cause in the said Court of Private Land Claims; that they are referred to at pages — of the transcript of record on file in this court, and that they may be received and considered by this court as a part of the record herein the same as though they appeared at the proper place in said transcript of record.

MATT. G. REYNOLDS,
United States Attorney for the Court of Private Land Claims and Special Counsel for the United States in this Cause in this Court.

F. W. CLANCY,
Attorney for Marino F. Sena.

Approved:
JOHN K. RICHARDS,
Solicitor General.

384 SANTA FÉ, SANTA FÉ CO., *Territory of New Mexico.*

In the book of record of marriages of the Cathedral Church of Saint Francis of Santa Fé, Santa Fé Co., N. M., I find the following:

Joseph de Leyba Ma Baca. En primero de Agosto de mil setecientos treinta y nueve echas las diligec segun reclamma y manda el Sto. concilio de Trente de qe no habiendo resultado impedimento como no resulto, case y vele in facie eclesiae a Joseph de Leyba con Ma Franca. Rodriguez (or Baca) siendo testigos de verlos casar Juan Chrinos y Bartolome de la Cruz con otros muchos qe assistieron y por ser asi verdad lo firme dho dia, y mes y ano.

FR. FRANCO. DE LA CONCEPON GONZALES.

I do declare and certify that these here above are true and correct according to the record books of marriages of the Cathedral Church of Saint Francis of Santa Fé, Santa Fé Co., N. M.

I do declare and certify that I am the custodian of the said record books of marriages, and that I am the rector of this Cathedral Church of Saint Francis of Santa Fé, N. M.

VERY REV. ANTHONY FOURCHEGU,
V. G. & Rector.

[SEAL.]

(10-ct. rev. stamp.)

Filed in the office of the clerk, Court of Private Land Claims, April 30, 1900.

JAS. H. REEDER, *Clerk*,
By I. L. CHAVES, *Deputy*.

385 (Translation.)

Joseph de Leyba Ma Baca.

On the first of August seventeen thirty-nine, proceedings having been taken as the holy council of Trent requires and orders from which no impediment results, as none resulted, I married and nuptially blessed in *facie eclesiæ* Joseph de Leyba with Maria Francisca Rodriguez (or Baca), the witnesses to see them married being Juan Chrinos and Bartolome de la Crus together with many others who were present, and this being the truth, I signed it said day, month and year.

FR. FRANCO. DE LA CONCEPON GONZALES.

Translation filed in the office of the clerk, Court of Private Land Claims May 22, 1901.

JAS. H. REEDER, *Clerk*,
By I. L. CHAVES, *Deputy*.

UNITED STATES OF AMERICA, }
Territory of New Mexico. }

I, clerk of the United States Court of Private Land Claims, do hereby certify that the foregoing is a full, true and perfect copy of the original and translation of the certified copy of the record of the marriage of Joseph de Leyba, filed in my office in the cause of Mariano F. Sena *vs.* United States of America, *et al.*, as the same remains on file in my office.

Witness my hand and the seal of said court this 22nd day of May, 1901.

[Seal Court of Private Land Claims, Santa Fé, New Mexico.]

JAMES H. REEDER, *Clerk*,
By IRENIO L. CHAVES, *Deputy*.

[Endorsed:] 278 Court Private Land Claims, Territory of New Mexico. Mariano F. Sena *vs.* United States *et al.* Copy and translation of certified record of marriage of Joseph de Leyba.

386 Filed in the office of the clerk, Court of Private Land Claims, April 20, 1900.

JAS. H. REEDER, *Clerk*,
By I. L. CHAVES, *Deputy*.

SANTA FÉ, SANTA FÉ CO., }
Territory of New Mexico. }

En catorce dias del mes de Febrero de mil sentecientos y sesenta anos Baptize solemnemente y puse los S. tos oleos a Salvador Antonio hijo legitimo de Simon de Leyba y de Feliciana Gonzales de quien fueron Padrinos Miguel Quintana y Juana Barbara Quintana y para que conste lo firme ye dicho dia mes y ano.

FR. JOSEPH DE URQUIDO.

I do declare and certify that these here above are correct and true according to the record books of baptisms of the Cathedral Church of Saint Francis of Santa Fé, Santa Fé Co., N. M.

I do declare and certify that I am the custodian of these record books and rector of this cathedral church.

VERY REV. ANTHONY FOURCHEGU,
[SEAL.] *V. G. & Rector.*

(10-ct. rev. stamp.)

(Translation.)

On the fourteenth day of the month of February one thousand seven hundred and seventy I solemnly baptised and annointed with the sacred oils Salvador Antonio, legitimate son of Simon de Leyba and Feliciana Gonzales whose sponsors were Miguel Quintana and Juana Barbara Quintana, and that so it may appear I sign it the said day, month and year.

FR. JOSEPH DE URQUIDO.

Translation filed in the office of the clerk, Court of Private Land Claims May 22, 1901.

JAS. H. REEDER, *Clerk*,
By I. L. CHAVES, *Deputy*.

387 UNITED STATES OF AMERICA, }
Territory of New Mexico. }

I, clerk of the United States Court of Private Land Claims, do hereby certify that the foregoing is a full, true and perfect copy of the original and translation of the certified copy of the baptism of Salvador Antonio Leyba, filed in my office in the cause of Mariano F. Sena *vs.* United States of America *et al.*, as the same remains on file in my office.

Witness my hand and the seal of said court this 22nd day of May, 1901.

[Seal Court of Private Land Claims, Santa Fé, New Mexico.]

JAMES H. REEDER, *Clerk*,
By IRENEO L. CHAVES, *Deputy*.

[Endorsed:] 278. Court Private Land Claims, Territory of New Mexico. Mariano F. Sena *vs.* United States *et al.* Copy and translation of certified record of baptism of Salvador Antonio Leyba.

388 [Endorsed:] File No. 18,029. Supreme Court U. S. October term, 1901. Term No. 235. Mariano F. Sena *vs.* The United States *et al.* Stipulation & addition to record. Filed July 1, 1901.

389 In the Supreme Court of the United States, October Term, 1901.

MARIANO F. SENA, Appellant,
vs.
UNITED STATES. } No. 235.

It is hereby stipulated and agreed that in the printing of the record in this case, the translations *only* of the following documents which were introduced in evidence in the court below, shall be included, the original Spanish of each being unnecessary to a proper presentation of the case:

Def't's Ex. C. Grant to Alphonso Rael de Aguilar,
" D. Grant to Joseph Romo de Vera,
" E. Archive 24. Grant to Juan Joseph de Archuleta,
" F. Archive 527. Grant to Catarina Maese,
" G. Archive 1043. Grant to Domingo Valdez,
" H. Archive 961. Grant to Phelipe Tafoya,
" I. Archive 962. Grant to Tomas de Tapia,
" J. Archive 313. Deed Rico de Rojas to Garcia de las Rivas,
" K. Archive 640. Donation in favor of Maria de Nava,
" P. Grant to Joseph Miguel de la Pena,
" V. Title papers to San Marcos grant,
" W. Agreement between Joseph Serafin Ramirez and Corydon E. Cooley,

Pl'iff's Ex. San Marcos grant papers,
" Deed, Domingo Fernandez to Demetrio de la Ora,
390 " Deed executed by alcalde of Santa Fé to Eugene Leitendorfer,

Plaintiff's Ex. Partition made by Domingo Fernandez, Feb'y 5, 1857.

It is further agreed that this stipulation may be printed as a part of the record, to account for the absence of the Spanish originals of said documents.

It is further agreed that the copy of the will of Simon de Leyba now on file in the office of the clerk of this court, certified by the librarian of the Territory of New Mexico is a true and correct copy of the original in the official custody of said librarian, and that such

certified copy with the translation thereof, also on file, may be printed with this stipulation in the record.

F. W. CLANCY,
Counsel for Appellant.
MATT. G. REYNOLDS,
Special Assistant to the Attorney General.
EDWARD L. BARTLETT,
Attorney for the American Turquoise Company and J. P. McNulty.

391 [Endorsed:] File No. 18,029. Supreme Court U.S. October Term, 1902 Term No. 40. Mariano F. Sena, app't, *vs.* The United States. Stipulation of counsel as to printing record. Filed June 7", 1902.

Endorsed on cover: File No. 18,029. Court of Private Land Claims, Term No. 40 Mariano F. Sena, appellant, *vs.* The United States. Filed January 22nd, 1901.

(868.)

En el Nombre de Dios padre todo poderoso Amen todos cuant^{o}. esta carta de mi testa^{to}. vieren como yo Zimeon de Leiba allandome en mi sano y ent^{o}. Juissio Memoria Ente^{o}. y voluntad e creido como firme^{to}. creeo en el Miste^{o}. de la Sama. Trinidad Dios Padre Dios hijo Dios Espiritu Santo y un solo Dios verdadero y en todo lo demas q^{e}. cree y confiesa Ntra Sta. Madre Yglessia Catholica Apostolica Roma^{a}. devajo de cuya fee y creensia e vivido y prote^{to}. vivir y morir y allandome en mi Rancho lejos de mi casa y abie^{da}. Resibido un golpe mortalde un Macho vronco y cre llendo no poder vivir y ser mi cuerpo mobido mando y or de^{o}. at^{e}. demorir se haga mi ultima volunt^{d}. demitesta^{to}. p^{a}. q^{e}. todos lo bean en la formula sig^{te}. A. S.

Primera^{mte}. mando mi cuerpo a la tierra de q^{e}. fue formado y mi alma encomien^{do}. a Dis Ntro Sr q^{e}. mi cuerpo sea sepultado en la Capilla de Sn. Mig^{l}. en Santafee serca de mi Reside^{nta}. y siendo hora conpete^{te}. sea con Missa de cuerpo presente

Yten. declaro mando se pag^{e}. un Novenario de Missas por el descanso de mi alma en la Parroq^{a}. de Ntro Padre S. fran^{co}. al Rev^{do}. Padre Hozio.

Yten. declaro primer^{mte}. haber sido casado y velado segun las reglas de Ntra Santa Madre Yglesia con felisiana Gonzales lla dif^{ta}. alg^{a}. Años en cuyo Matrim^{o}. procemos un hijo Salbador Ant^{o}. a quien reconosco como mi unico hered^{o}.

Ytem declaro por mis bienes la casa de mi morada en Analco q^{e}. se conpone de seis piesas un corral y caballerisa una plasita y una huerta

Ytem. declaro no deverle a nadie nada.

Ytem declaro deverme fran^{co}. Ansuras diezisiete pesos de la tierra los q^{e}. mando se cobren

Ytem declaro deverme fran^{co}. Coris natural del pueblo de Sto. Domig^{o}. cinsse cabras y diez ovejas de bientre las q^{e}. mando se cobren

Yten declaro por mis bienes de canpo tener veinteisiete Bacas de bient^{o}. y cuatro lluntas de Buelles sinco toros messos diez terneras de la nasensia y sinco de año arriba

Ytem declaro tener treint^{a}. y dos cabr^{a}. sin las chicas

Ytem declaro tener una Manadita de Yeguas chica dos caballos mansos un Maho Bronco sinco burros dos broncos y tres mansos los q^{e}. est^{o}. en poder de Ant^{o}. Riega en el arrollo de piedra

Ytem declaro tener dos Sant^{o}. de bulto y un Sto. Crist^{o}. de bronse un gergon de veinte y seis varas castell^{no}. una Cobacha dos tarimas un perol y un caso de cobre y un tenamaist^{o}. chico

Ytem declaro tener haqui una barbacova * * * comp^{l}. t^{a}.

Ytem declaro tener una suerte de tierra de pan llebar junt^{o}. a los Tenorios

Ytem declaro tener en mi poder el sabie de mi difunto Padre el q^{e}. mando se entrieg^{o}. a mi hijo Salvador.

Yten declaro tener una petaca vieja de cuero en la casa de mi residensia en Santa fee

Ytem. declaro tener una pistola una cartuh^{a}. y una Escop^{ta}. española

Ytem. declaro tener una Mersed de Tierras dad^{a}. Por el Rei de España a mi difunto Padre Joseph de Leiba en 1728 y son sus linderos A. S.

Por el sur la cuesta llamada el arrollo del Orega^{a}. P^{r}. el Norte el camino * * * q^{e}. ba para Pecos de los Serrillos o tierras del Cap^{n}. Sebastian de Vargas por el orien^{te}. con el camino q^{e}. ba de Santa fee al hojo de San Marcos por el Poniente con tierras de el Pueblo biejo de la Sienega segun costa por los origi^{les}. q^{e}. se allan en la petaca de mi reside^{ia}. en Sant^{a}. fee en dha Mersed se halla ubicado un rancho en el Ojo del Collote una casita dos cuarto^{s}. y una cosinita un torreon chico un corral grande de latas dos chiqeros una Barbacova no mui grande con Mais fri jol un jacal en los tenporales alli se halla en mi Rancho mi Erra^{mta}. de labranza seis Arados dos achas dos cabadores seis Yugos tres topiles un telar un torno tres lisos dos peines una asuela cuatro pares de collundas cutro barsones una silla de montar conpleta As. S.

Y para cunplir este mi testam^{to}. y ultima voluntd. orde^{n}. y Nombro p^{r}. mi alvazea a mi hijo Salbador An^{to}. y para su mallor Balida^{r}. y firmeza mande a suplicar y pedir al Sor Alferes Salbador Rivera q^{e}. biniera aqui a mi Rancho no pudiendo llo moverme a causa de mi lastimada Asidental^{mte}. q^{e}. interpusiese su autoridad y dho. Allferes dije q^{e}. le otorgaba y otorge e interpuse mi autoridad judisial y D^{n}. yo dho. alferes Salbador Rivera q^{e}. prs^{te}. soi a su otorgam^{to}. en cunto pueda y aiga lugar y deho. y doy fee y conosco al otorga^{te}. q^{e}. al presente se alla de peligro pero en su sano y ente^{r}. juissio segun la concorda^{ncia}. de Razones q^{e}. asi lo otorgo en este lugar del ojo del collote en qinze dias del mes de 8tbre en este año de 1783. y esto paso an^{te}. mi el alferes Rivera a rruego fueron llamados a rogados siendo testigos al haser dho. testa^{mto}. [siendo]* fran^{co}. An^{to}. Zuaso An^{to}. Riega y Jose Mig^{l}. Bachiha.

ZIMEON DE LEYBA. [RUBRICA.]
SALBADOR RIVERA. [RUBRICA.]

Testigo^{s}.:
FRAN^{co}. ATO. ZUASO. [RUBRICA.]
ANTO RIEGA. [RUBRICA.]

Testigo:
JOSEPH MIGL. BACHICHA. [RUBRICA.]

TERRITORY OF NEW MEXICO, }
County of Santa Fé. }

I, Lafayette Emmett, librarian of the Territory of New Mexico do hereby certify that the foregoing is a full, true, and perfect copy of document numbered 868, of the Spanish and Mexican archives of the Territory of New Mexico, of which I am the custodian, the original thereof now remaining on file in my office.

In witness whereof, I have hereunto set my hand this 14th day of September, A. D. 1901.

L. EMMETT,
Librarian of the Territory of New Mexico.

[* Word enclosed in brackets erased in copy.]

Translation of Will.

(868.)

In the name of Almighty God, the Father, amen. All who may see this writing of my testament that I, Zimeon de Leiba, finding myself in my sound and entire judgment, memory, as testament and will, I have believed as I firmly believe in the Mystery of the Most Holy Trinity, God the Father, God the son, God the Holy Ghost, and one single, true God, and in all the other things which Our most Holy Roman Apostolic Catholic Mother Church believes and ordains, in which faith and belief I have lived and declare that I will live and die, and finding myself at my ranch, far from my house, and having received a mortal blow from an unbroken mule and believing myself unable to live nor my body to be moved, I command and order, before dying, my last will of my testament be made that all may see it, in the following form, to wit.

Firstly. I send my body to the earth of which it was formed, and my soul I commend to God, Our Father; that my body be buried at the Chapel of San Miguel in Santa Fé, near my residence, and being at a proper hour, let it be with a mass of bodily presence.

Item. I declare and direct that there be paid nine days of masses for the repose of my soul in the parish church of Our Father, Saint Francis, by the Reverend Father Hozio.

Item. I declare firstly that I have been married and nuptually blessed according to the rules of our Holy Mother Church with Feliciana Gonzales, already deceased some years, in which marriage we procreated one son, Salvador Antonio, whom I recognize as my sole heir.

Item. I declare as my property, the house of my residence at Analco which is composed of six rooms, a corral and stable, an interior court (placita) and a garden.

Item. I declare that I owe nothing to any one.

Item. I declare that Francisco Anzuras owes me seventeen dollars of the country, which I direct shall be collected.

Item. I declare that Francisco Coris, a native of the Pueblo of Santo Domingo owes me fifteen she-goats and ten breeding ewes, which I direct shall be collected.

Item. I declare for my country property, that I have twenty-seven breeding cows and four yoke of oxen, five range bulls, ten yearling heifers and five over a year old.

Item. I declare that I have thirty-two she-goats without the little ones.

Item. I declare that I have a small herd of mares, two broken horses, one unbroken mule, five asses, two unbroken and three broken, which are in the possession of Antonio Riega at the Arroyo de Piedra.

Item. I declare that I have two sculptured saints and one Holy Christ of bronze, one large carpet of twenty six Castilian varas, one canopy, two bedsteads, one large copper kettle, one small copper kettle, and one small kitchen tripod.

Item. I declare that I have here one complete corn-crib.

Item. I declare that I have one piece (suerte) of wheat-growing land adjoining the Tenorios.

Item. I declare that I have in my possession the sabre of my deceased father, which I direct shall be delivered to my son Salvador.

Item. I declare that I have an old trunk of raw-hide in the house of my residence at Santa Fé.

Item. I declare that I have a pistol, a cartridge-box, and a Spanish gun.

Item. I declare that I have a grant of lands given by the King of Spain to my deceased father, Joseph de Leiba in 1728, and their boundaries are as follows:

On the south the slope (cuesta) called the arroyo of the oregano, on the north, the road which goes towards Pecos from the Cerrillos, or lands of the Captain Sebastian de Vargas, on the east with the road which goes from Santa Fé to the spring of San Marcos, on the west with lands of the old Pueblo of the Cienega, as appears by the original papers which are to be found in the trunk of my residence at Santa Fé. In said grant there is constructed a ranch at the Coyote spring, a small house, two rooms and a small kitchen, a little tower, a large corral of poles, two corrals for young animals, a corn-crib not very large with corn and beans, a hut (jacal) in the temporal lands. There is at my ranch my farming tools, six plows, two axes, two hoes, six yokes, three ox-goads, one loom, one spinning-wheel, three skeins (of silk?), two wool-cards, one adze, four pairs of yoke straps, four plough-beam straps, one riding saddle complete. As. S.

And in order to complete this my testament and last will I order and appoint for my executor my son Salvador Antonio, and for its better validation and stability, I sent to supplicate and ask the Alferez Salvador Rivera that he should come here to my ranch, I not being able to move myself on account of my being accidentally wounded (or hurt), that he should interpose his authority, and said Alferez I said that I was executing and executed it, and I interposed my judicial authority and decree, I, said Alferez, Salvador Rivera, who am present at its execution, as far as I may be able and there is authority in law, and I certify and know that the testator is at the present moment in danger but in his sound and entire judgment according to the concurrence of reasons, that thus he executed it at this place of the Coyote Spring on the fifteenth day of the month of October in this year of 1783, and this took place before me the Alferez Rivera at request were called and asked, being witnesses to the making of this testament Francisco Antonio Zuaso, Antonio Riega and Jose Miguel Bachiha.

ZIMEON DE LEYBA. [RUBRIC.]
SALBADOR RIVERA. [RUBRIC.]

Witnesses:
FRANCO. ATO. ZUASO. [RUBRIC.]
ANTO RIEGO. [RUBRIC.]

Witness:
JOSEPH MIGL BACHICHA. [RUBRIC.]

CLERK'S COPY. 5186

STIPULATION AND ADDITION TO RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 40.

MARIANO F. SENA, APPELLANT,

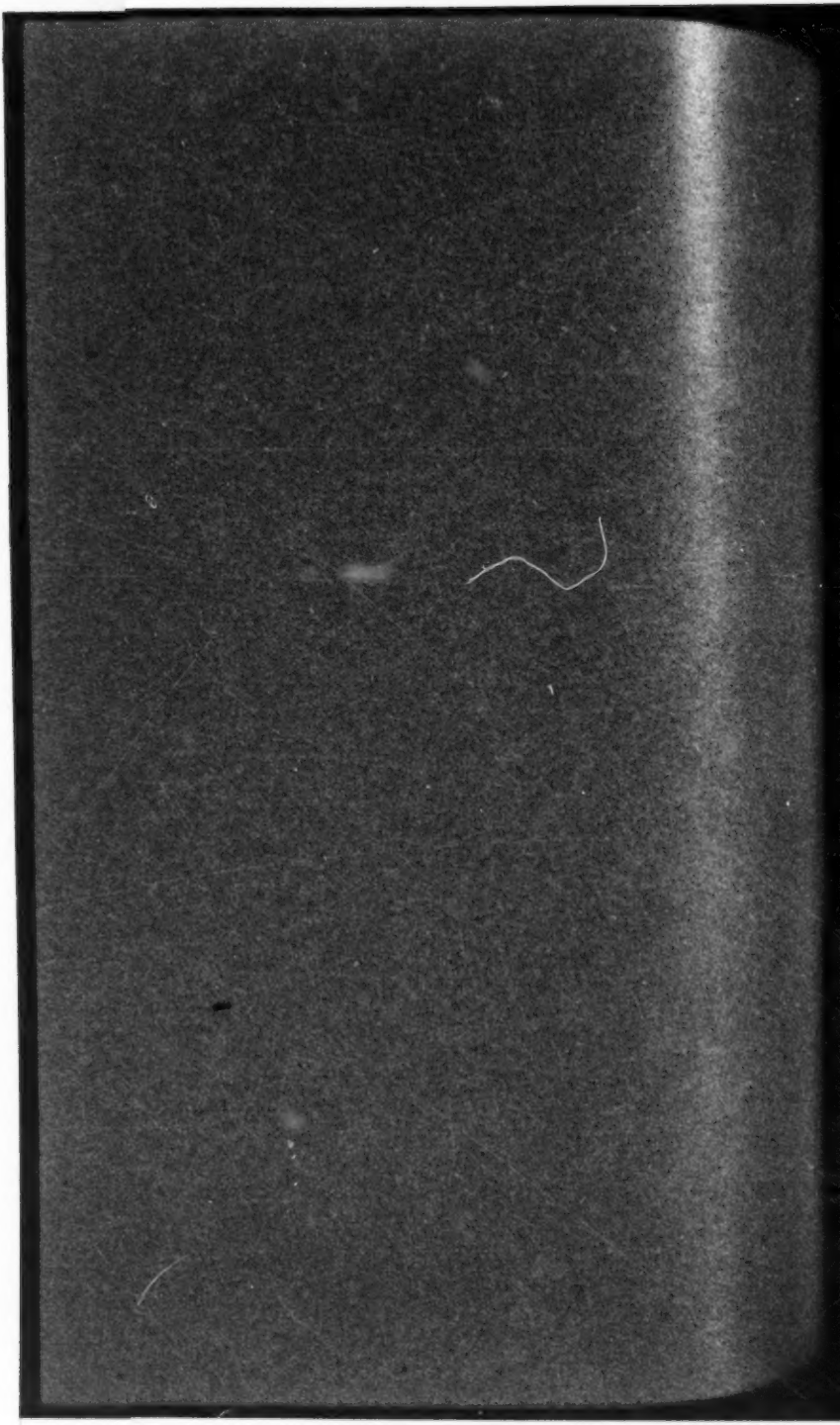
vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

RECORD FILED JANUARY 22, 1901. ADDITION TO RECORD FILED DECEMBER 1, 1902.

(18049.)



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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 40.

MARIANO F. SENA, APPELLANT,

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THE UNITED STATES.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

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1 **SUPPLEMENTAL RECORD.**

Supreme Court of the United States, October term, 1902.

MARIANO F. SENA, APPELLANT,
vs.
THE UNITED STATES AND OTHERS. } No. 40.

Appeal from the Court of Private Land Claims.

It is hereby stipulated and agreed by and between the respective counsel for the appellant, Mariano F. Sena, and the United States, the American Turquoise Company, and John P. McNulty, appellees, that the instruments attached hereto, to wit:

1. A certified copy of the last will and testament of Salvador Leyba, dated at Santa Fe, on the 12th day of March, 1836, taken from Book F, page 358 et seq., record of deeds in the office of the probate clerk and ex-officio recorder for the county of Santa Fe, New Mexico, and filed for record on the 8th day of September, 1872.

Also translation thereof.

2. A certified copy of a deed by Juan Angel Leyba, for himself, and on behalf of his sisters Juana and Josefa Leyba, and Rafael Gutierrez, heirs of the deceased Salvador Leyba, dated March 24, 1836, to Jose Antonio Romero, conveying a piece of agricultural land 86 varas wide and 254 varas long; consideration, forty-three dollars. Said sale
2 is recited to have been made to pay the funeral and burial expenses of the deceased father.

Filed for record October 1st, 1890, and recorded October 2nd, 1890, in Book V, pages 280 and 281, record of deeds of Santa Fe County, New Mexico.

Also translation thereof.

3. A certified copy of the last will and testament of Maria Josefa Leyba, dated June 19th, 1860, taken from the files of the office of the probate clerk and ex officio recorder of Santa Fe County, and bearing endorsement "Will of Josefa Leyba 197," and the approval and appointment of Serafin Ramirez as administrator, dated March 11, 1861.

Also translation thereof.

4. A certified copy of an hijuela from Jose Serafin Ramirez, administrator of the estate of Maria Josefa Leyba, deceased, designating the property which his wife, Maria Antonia Leyba, had inherited from her mother, Maria Josefa Leyba, deceased.

Endorsed on the said hijuela is a deed dated October 1st, 1864, from Serafin Ramirez and Maria Antonia Leyba, his wife, to Jose Aguilar and Maria Apolonia Leyba to a portion of the property mentioned in said hijuela.

Endorsed also further, is a conveyance dated October 2, 1864, and acknowledged before Maximo Martinez, justice of the peace, on December 23, 1868, and filed for record on the 28th day of December, 1868, and recorded in Book E, at pages 40 and 41 of the record of deeds of Santa Fe County, New Mexico.

Also translation thereof:

shall be printed as Supplemental Record, at the cost of the United
3 States, and be taken and become a part of the record in this cause, and considered as if said instruments had been offered in evidence

by the United States at the original trial of said cause, reserving, however, to counsel for appellant the right to urge on the hearing any objections he may deem proper as to their competency, relevancy, legal effect, or probative force, or any ground he may deem advisable, except the objection as to the time and manner of offering the same.

F. W. CLANCY,
Attorney for Appellant.

J. K. RICHARDS,
Solicitor-General.

MATT. G. REYNOLDS,
Special Assistant to the Attorney-General.

EDWARD L. BARTLETT,
Counsel for the American Turquoise Company and John P. McNulty.

4 1.

Sello Cuarto [Sello.] Una Cuartilla

Para los años de mil ochocientos treinta y seis y ochocientos treinta y siete.

En el Nombre de Dios Todo Poderoso, y de la Siempre Virg^{a} Ma. Señora Nuestra, Concebida Sin Mancha del pecado Original. Amen.

Sepan cuantos este mi testam^{to} vieren, Como yo Salbador Leyba hallandome enfermo por voluntad del todo Poderoso, pero en mi entero y sano conocimiento, hago y ordeno este mi testam^{to} y es mi voluntad en la forma siguiente: Primeram^{te} digo q^{e} creo y confieso en el misterio de la Sma. Trinidad: Padre, Hijo y Espiritu Santo, tres personas destintas y un Solo Dios verdadero. Creo en todo lo que cre y confiesa nuestra Santa Madre Yglesia y en esta fe y creincia quiero vivir y morir, cuando mi Dios sea servido, en cuyo supuesto ordeno este mi testamento en la forma siguiente:

Primeram^{te} mando mi Alma al Señor que la crio y redimio con el precio de su Sma. Sangre, y mi cuerpo a la tierra de que fue formado, el que es mi voluntad sea amortajado a la voluntad de mis hijos, y que sea enterado en el Campo Santo de esta Ciudad y que mi entiero sea humilde.

Ytem. Mando que pa. mandas forzosas se den dos p^{s}.

Ytem. Declaro haber sido casado y belado en primeras nuncias, con Ma. Franca. Anta. Lobato ya difunta cuarenta y nueve años, en cuyo tiempo hubimos hijos, Ma. Manuela, Juana, Josefa y Juan Angel, los cuales reconosco p^{r} mis lejitimos hijos y herederos.

Ytem. Declaro tener por mis bienes, la casa de mi habitacion conpuesta de cuatro piezas, una sala y tres cuartos y el aguar de ella, q^{e} son dos cajas con ceradura una, y una sin ella, tres colchones, dos buenos y uno usado, dos fresadas, dos Almohadas, Cuatro Santos de papel, un Santo Christo de madera, tres cabadores, uno grande y dos chicos, una acha.

Ytem. Declaro tener una guertesita con arboles frutales en una tierrita contiguo á la casa de mi habitacion.

Ytem. Declaro tener una suerte de tierra de sembrar q^{e} se halla junto á los Tenorios y consta por los documentos.

Ytem. Declaro tener otro rancho en el llano de los Lobatos, q^{e} tambien cons^{ta} p^{r} sus documentos.

Ytem. Declaro tener en Sto. Domingo, en poder de mi nieto Anto. Jose Natural dho. Pueblo doce cabras de vientre.

Ytem. Declaro q^{e} to. lo anotado es cuanto reconosco por mis bienes.

Ytem. Declaro no deber a nadie ni un medio.

Ytem. Declaro deberme Juan Cruz Aragon veinte y cuatro p^{s} que se aclarara p^{r} el testigo, un hijo de Juan Cristobal Sanchez, mando á mis herederos los cobren. Tambien mi debe Isidro de Lona once p^{s} resta de un Solar q^{e} le vendi, y mi abono siete pesos. Don Dolores Madrid mi deve una fanega de trigo, Don Perfecto Salaser dos bacas. Buslosmetro Baldes, del estado de Sonora, debe diez p^{s} dos rr^{s} en din^{o}.

Ytem. Declaro pr. mis bienes dos nabajas de barba.

Ytem. Ordeno q^{e} la casa de mi abitacion se les quede despues de mi fallecim^{to} a mis dos hijas Juana y Ma. Josefa, y a mis dos hijos hombres les quedan los dos corrales y el solar de la casa vieja p^{a} q^{e} ellos fabriquen.

Ytem. Los herederos de Jose Ma. Paiz deben diez p^{s} dos rr^{s}, resto de veinte y cuatro v^{s} de solar a un p^{o} v^{s} y recibi del finado trese p^{s} seis rr^{s} q^{e} entraran a la masa de mis bienes.

Ytem. Ordeno que de todo lo q^{e} se reconose p^{r} mis bienes fuera de lo q^{e} se separa p^{a} mis hijas, se reparta p^{r} iguales partes, entre mis cuatro hijos y lejitimos herederos.

Ytem. Declaro no haber hecho nunca otro testamt^{o}, y por lo mismo es mi voluntad q^{e} a esto es la de toda la fuerza necesaria.

Ytem. Es mi voluntad, sean mis albaseas, en primer lugar Dn. Juan Ortiz, en segundo Dn. Eugo. Sanchez y en tercero Dn. Justo Pino, a quienes ruego y encargo cumplan y ejecuten todo lo q^{e} conta en mi ultima disposicion testamentaria y p^{a} q^{e} este mi testamento tenga toda la validacion y fuerza nesesaria he hecho compareser y suplicado al sor. alce. 1^{o} de esta ciudad de Santa Fe, Dn. Grego. Sanchez, interponga su autoridad. Y yo, el presente juez, dijo q^{e} interponia é interpuse mi autoridad siendo testigos al haser dho. testamento los C. C. Esquipula Pacheco, Pom^{o} Apodaca y Migl. de Lona, los que firman con migo, el referido juez y los de ass^{a} segun dro. de q. doy fee, en Sta. Fe, a 12 de Mro. de 1836.

SALBADOR LEYBA [a cross].

GREGORIO SANCHEZ.
Testigo: ESQUIPULA PACHECO.
Testigo: MIGL. DE LONA, NEPOMOSENO, *Apodaca*.
De ass^{a}: FRANCO ARCHIBEQUE.
De ass^{a}: JORGE RAMIREZ.

I do hereby certify that I have this 8th day of September, 1872, recorded this foregoing testament.

SAML. ELLISON, *Clerk*.

TERRITORY OF NEW MEXICO,
County of Santa Fe, ss:

I, Manuel Delgado, clerk of the probate court and ex officio recorder in and for the county and Territory aforesaid, do hereby certify that the foregoing two pages contain a full, true, and correct copy of the last will and testament of Salvador Leyba, as the same appears of record in my office in Book F, record of deeds of said county, at page 358.

In witness whereof I have hereunto set my hand and affixed the seal of said court, this 18th day of November, A. D. 1902.

[SEAL.]

MANUEL DELGADO,
Probate Clerk and Recorder,
By HILARIO RACCA,
Deputy Clerk.

7 [Translation.]

Will of Salvador Leyba.

Seal fourth. [Seal.] One cuartilla.

For the years one thousand eight hundred and thirty-six and eight hundred and thirty-seven.

In the name of Almighty God and of the Ever Virgin Mary, Our Lady, conceived without original sin. Amen.

Be it known by all who may see this my testament that I, Salvador Leyba, being sick by the will of Almighty God but in my complete and sound understanding, make and order this my testament, which is my will, in the following manner: First, I state that I believe in and confess the mystery of the Most Holy Trinity, Father, Son, and Holy Ghost, three distinct persons and only one true God. I believe in all that our Holy Mother, the Church, believes and confesses, and in this faith and belief I desire to live and die whenever it shall please God, in expectation of which I order this my testament, in the following form:

First. I commend my soul to the Lord, who created and redeemed it with the price of His Most Holy Blood, and my body to the earth from which it was made, which it is my will shall be shrouded as my children may determine, and that it be buried in the cemetery of this city, and that my burial be a humble one.

Item. I order that there be given to obligatory bequests two dollars.

Item. I declare to have been married and blessed in first marriage with Maria Francisca Antonia Lobato, deceased, for forty-nine years, during which time we had the following children: Maria Manuela, Juana, Josefa, and Juan Angel, whom I recognize as my le-

8 gitimate children and heirs.

Item. I declare as my property the house of my residence, composed of four rooms, a parlor and three rooms, and its furniture, which consists of three chests, two good ones and an old one; two blankets, two pillows, four religious paper stamps, one wooden crucifix, three hoes, a large and two small ones, one axe.

Item. I declare to own a small orchard with fruit-bearing trees in a small piece of land contiguous to the house of my residence.

Item. I declare to own a piece of agricultural land, which is located near the Tenorios, as appears by the documents.

Item. I declare to own another ranch at the Llano de los Lobatos, as appears by its deeds.

Item. I declare to have at Santo Domingo in the possession of my grandson, Antonio Jose, an Indian of said pueblo, twelve breeding goats.

Item. I declare that all that has been set forth constitutes everything that I recognize as my property.

Item. I declare that I do not owe anyone a single dime.

Item. I declare that Juan Cruz Aragon owes me twenty-four dollars, which will be proven by the witness, a son of Juan Cristobal Sanchez. I order my heirs to collect them. Isidro de Lona also owes me eleven dollars, balance for a lot which I sold him, on which he paid me on account seven dollars. Don Dolores Madrid owes me one fanega of wheat. Don Perfecto Salasar, two cows. Buslosmetro Baldes, of the State of Sonora, owes ten dollars two reals in cash.

Item. I declare as my property two razors.

9 Item. I order that the house of my residence after my death be left to my two daughters, Juana and Maria Josefa, leaving to my two sons the two corrals and the old house lot, in order that they may build upon it.

Item. The heirs of Jose Maria Paiz owe ten dollars and two reals, balance for a lot of twenty-four varas, at one dollar a vara, and I received from the deceased thirteen dollars six reals, which shall go into the mass of my property.

Item. I order that all that is recognized as my property, outside of what is set apart for my daughters, be divided in equal parts among my four sons and legitimate heirs.

Item. I declare that I have never made any other will, and therefore it is my will that all the necessary force be given to this one.

Item. It is my will that my executors be, in the first place, Don Juan Ortiz; in the second, Don Eugenio Sanchez, and in the third, Don Justo Pino, to whom I request and ask to comply and execute all that is set forth in my last testamentary disposition. And in order that this will may have all the necessary validity and force, I have caused to appear and asked the Sir 1st Alcalde, of this city of Santa Fe, Don Gregorio Sanchez, to interpose his authority, and I, the present judge, stated that I would and did interpose my authority, being witnesses to the making of said will the citizens Esquipula Pacheco, Pomoseno Apodaca, and Miguel de Lona, who signed with me, the said judge, and the attending witnesses, according to law, to which I certify at Santa Fe on the 12th day of March, 1836.

SALBADOR LEYBA.

GREGORIO SANCHEZ.

10 Witness: ESQUIPULA PACHECO.

Witness: MIGUEL DE LONA, NEPOMOSENO APODACA.

Attending witness: FRANCISCO ARCHIBEQUE.

Attending witness: JORGE RAMIREZ.

I do hereby certify that I have, this 8th day of September, 1872, recorded the foregoing testament.

SAML. ELLISON, *Clerk.*

11 2.

Deed from Juan A. Leyba to Jose A. Romero.

Sello cuarto
[SELLO]
Una cuartilla

Para los años de mil ochocientos treinta y seis y ochocientos trienta y siete.

En la ciudad de Santa Fe, capital del Territorio del Nuevo Mejico, a los veinte y cuatro dias del mes de Mzo. de mil ochocientos treinta y seis, ante mi Don Agustin Duran, Alce. 2° constitucional de esta Ciudad, comparecieron presentes las personas de Juan Angel Leyba y José Antonio Romero, ambos vecinos de esta jurisdiccion, y dijo el primero que representando la persona de sus hermanas Juana y Josefa Leyba, y Rafael Gutieres, ambos herederos del finado Salvador Leyba, vendía y en efecto vendió de su libre y espontania voluntad al referido Romero un pedazo de tierra de pan llebar compuesto de ochenta y seis varas de ancho y doscientas cincuenta y cuatro de largo, la que vendió en cantidad de cuarenta y tres pesos cuyo importe dice el vendedor haber recibido en cabras y din° á su satisfaccion, y que esto lo han hecho con el justo fin de satisfacer el funeral y entierro de su finado padre como unicos herederos de este; y que si algo mas vale, ó valer pueda la enunciada tierra de su demasia le hace gracia y donacion al comprador para, mera, perfecta, e irrevocable, cual el d^ro^ llama e intervivos, y que da y traspasa a favor del referido comprador todo el d^ro^. y señorio qu. en dha. tierra tenía para q. use de ella como fuere su voluntad, vendiendola o enagenándola como les parezca sin qe. ni por los vendedores, sus hijos, herederos ni demas sucesores se le ponga pleito ni demanda, ni ahora ni en ningun tiempo; y si acaso lo pusieren qe. no sean oidos ni en juico ni fuera del, obligándose en este caso el vendedor por si y las partes qe. representa el salir al frente hasta dejarlo en quieta y pacifica posecion, pa. cuyo sanamiento y cumplimto. de esta escritura obliga su persona y bienes habidos y por haber, todo sujeto á las leyes de la materia, siendo los linderos de la tierra vendida, por el oriente con tierra de Pablo Aliri, por el poniente con el vendedor, por el norte con el citado Aliri, y por el Sur con Juan José Lujan. Todo lo cual otorgó ante mi el dho. alcalde consti-
12 tucional, suplicándome interpusiera mi autoridad y decreto judicial; y yo, el enunciado alcalde, dije que la interponía e interpuse tanto cuanto por derecho se requiere y es conferido; en cuyo testimonio asi lo otorgó y firmó conmigo los testigos instrumentales que lo fueron los C. C. Domingo Fernandez, Santiago Armijo y Gaspar Ortiz, presentes y vecinos de esta ciudad con los de mi asa. de que doy fe.

AGUSTIN DURAN.

Instrumental: SANTIAGO ARMIJO.
Instrumnt.: GASPAR ORTIZ.
De Assa.: JORGE RAMIREZ.
De Assa.: NICOLAS PINO.
Instrumental: DOMINGO FERNANDEZ.

Filed in my office for record Oct. 1st, 1890, at 11.15 o'clock a. m. and recorded this 2nd day of October, 1890.

MARCELINO GARCIA, *Clerk and Recorder.*

TERRITORY OF NEW MEXICO,
County of Santa Fe, ss:

I, Manuel Delgado, clerk of the probate court and ex officio recorde in and for the county and Territory aforesaid, do hereby certify that the foregoingone page and thirteen lines contain a true, full, and correct copy of the deed from Juan A. Leyba to Jose A. Romero, as the same appears of record in my office in Book "V," record of deeds of said county, at pages 280 and 281.

In witness whereof I have hereunto set my hand and the seal of said court this 19th day of November, A. D. 1902.

[SEAL.]

MANUEL DELGADO,
Probate Clerk and Recorder.

By HILARIO BACA,
Deputy Clerk.

13 [Translation.]

Deed from Juan A. Leyba to Jose A. Romero.

Fourth seal. [Seal.] One cuartilla.

For the years one thousand eight hundred and thirty-six and eight hundred and thirty-seven.

In the city of Santa Fe, capital of the Territory of New Mexico, on the 24th day of the month of March, one thousand eight hundred and thirty-six, before me, Don Augustin Duran, second constitutional alcalde of this city, personally appeared Juan Angel Leyba and Jose Antonio Romero, both residents of this jurisdiction, and the first said that, representing the persons of his sisters, Juana and Josefa Leyba, and Rafael Gutierrez, both heirs of Salvador Leyba, deceased, he would and in fact did sell, of his own free will, to the said Romero, a piece of agricultural land measuring eighty-six varas in width and two hundred and fifty-four varas in length, which he sold for the price of forty-three dollars, which sum the grantor states to have received in goats and cash to his entire satisfaction, and that he does this with the just end of paying the funeral and burial expenses of his deceased father as his sole heirs, and that if said land is or should be worth more, of the excess he makes to the purchaser gift and donation, pure, simple, perfect, and irrevocable, which the law terms intervivos, and that he gives and transfers in favor of the aforesaid purchaser all the right and seignory that he had in said land, in order that he may use it in the manner that he may choose, selling or alienating it as he might deem proper, in regard to which neither the grantors, their children, and heirs, nor the other successors, will institute any suit or claim whatsoever at any time,
14 and in case they should bring it that they be not heard either in or out of court, and that in such a case the grantor binds himself and for the parties he represents to appear in defence until he leaves him in the quiet and peaceable possession thereof. For the execution and compliance of this deed he binds his person and present and future property, all subject to the laws in the matter. The boundaries of the land sold being on the east by lands of Pablo Aliri, on the west by the grantor, on the north by the aforesaid Aliri, and on the south

by Juan José Lujan; all which he executed before me, the said constitutional alcalde, asking me to interpose my authority and judicial decree, and I, the said alcalde, stated that I would and did interpose it in so far as is required by law and is authorized. In witness whereof he thus executed and signed it with me and the instrumental witnesses, who were the citizens Domingo Fernandez, Santiago Armijo, and Gaspar Ortiz, being present and residents of this city, with those of my attendance, to which I certify.

AGUSTIN DURAN.

Instrumental: SANTIAGO ARMIJO.
Instrumental: GASPAR ORTIZ.
Instrumental: DOMINGO FERNANDEZ.
Attending: JORGE RAMIREZ.
Attending: NICOLAS PINO.

Filed in my office for record October 1, 1890, at 11.15 a. m., and recorded this 2nd day of October, 1890.

MARCELINO GARCIA,
Clerk and Recorder.

16 3.

Testamento.

TERRITORIO de NUEVO MEJICO
Condado de Santa Fe.

En el Nombre de Dios Todo Poderoso, Amen:

Sepan cuantos estas bieren como yo Ma. Josefa Leyba, Hija Lejitima y de Lejitimo Matrimonio de Salbador Leyba, y de Ma. Franca. Lobato ya Difuntos, Residente en el Condado y Territo. antes dho°. y hallandome hoy con mente y memoria sana y en mi entero y cabal juicio, aunque hoy por la voluntad de Dios me hayo algo enferma y bien abansada en la vida y contenplando en la insertesa de ella; Por tanto hago, Ordeno, Publico, y Declaro este testamto. Ser mi unica y Deliberada Voluntad, y Como fiel cristiana (C. A. R.) creo y confieso inefable misterio de la Santisima Trinidad, Padre, Hijo, y Espiritu Santo, y aunque Realmte. Distintas Son una propia Sustancia y un solo Dios Verdadero; Creo en todo lo que cree y confiesa Nuestra Santa Madre Yglesia, y en esta Fee y crencia quiero vivir y morir, y pongo por mi intersesora y protectora a la Siempre Virgen Ma. Señora Nuestra, y Madre de Dios, al Santo Angel de mi Guarda a los de mi Nombre y Devocion para que intersedan por mi, para que por la preciosisima Sangre de Nuestro Señor Jesucristo, mis culpas, y pecados me Sean Perdonados, y mi alma llevada a descansar a la Gloria Amen: Por tanto:

Ordeno, Publico, y Declaro, Ser esta mi ultima Voluntad, y Testamento.

A saber:

Primeramte encomiendo Mi alma a Dios que de la nada la cria y el cuerpo a la tierra de que fue formado, el que es mi Voluntad sea amortajado segun la voluntad de mis hijos y enterrado en el Campo Santa o en la parte que a ellos y a mi marido les combiniere igualmte arreglaran humildemte mi entierro o como les parezca.

Ytem. Mando a mis testamentarios el que para mandas forsosas se den Dos pesos, y de mis cortos bienes en el remaniente del quinto se pagaren las misas que crean convenientes sin gravar a mis hijos en lo poquito qe pueda tocarles.

Ytem. Declaro haber sido casada y belada legitimte "in faese Ecclesiae" Con Jose Eleuto Rodriguez, y de cuyo matrimonio No tuvimos ni proqueamos hijo algunos.

Ytem. Declaro el haber tenido antes de casarme seis hijos
17 Naturales llamados Juan, Jesus Maria, Tomaz, Albino, Apolonia, y Antonia, de cuyos hijos viven Jesus Ma. Apolonia y Antonia, los cuales reconzco por mis hijos legitimos y decendientes segun las leyes.

Ytem. Mando y declaro que los dos cuartos en que vive mi hija Apolonia y que antes pertenecia a Manuel Leyba, mi sobrino, sean entregados a mi marido por ser de su propiedad por haberla el comprado, pues es mi boluntad que el gose del derecho que a mi correspondia por gananciales por ser comprada por el en el tiempo de nuestro matrimonio, pues lo he hecho asi presentes mis hijos y con su consintimto.

Ytem. Declaro tener unos cortos bienes que se componen de una casa que se compone de una sala y dos cuartos otra casa comensada (excepto la pieza de caballerisa que tambien corresponde a mi marido).

Ytem. Declaro tener una huertesita contigua a la misma casa, y un pedaso de tierra en el alto de los armentas, con sus linderos y dimensiones segun su escritura.

Ytem. Declaro tener otro pedaso de tierra en el rancho de los tenorios que se compone de cincuenta y cinco varas de ancho y de largo del camino de los carros a la loma, segun esta conocido.

Ytem. Declaro tener un pobre ajuar de casa, el cual sera repartido en proporcion entre mis herederos.

Ytem. Declaro que a mi hijo Jesuz Ma. no deve de tocar nada de las tres piesas de casa ni de la casa comensada por razon de que ya tiene su parte recibida, pero si el quisiere traer a la masa la que tiene recibida tocara igualmente con Apolonia y Antonia; pero de las tierras tocara la misma proporcion que los demas herederos pues de estas nada tiene recibido.

Ytem. Declaro no deber a nadie un solo medio.

Ytem. Declaro no deverme nadie.

Ytem. Declaro que si alguna cosa faltare que poner mando a mis testamentarios lo traigan a la masa de mis bienes para que sea repartido.

Y para cumplir en este mi testamento y ultima voluntad nombro por mis testamentarios y ejecutores a mi marido Jose Electo Rodriguez, y a mi llerno e hijo politico Sarafin Ramirez, a los cuales insolidum y a cada uno de por si doy facultad y poder bastante tanto cuanto por derecho se
requiere para que determinen, y ejecuten y asi mismo paguen y
18 cobren y complan por si sin intervencion judicial; pues es con el fin que despues de mi fallesimto. se apoderen de mis bienes, y cumplan por si y escrupulosamte y les encargo la conciencia, cumplan y paguen y distribuyan todo encargo segun mi voluntad; el cual encargo les durara el tiempo que les fuere necesario pues les prorrogo el suficiente.

Ytem. Mando que despues de cumplido y pagado todo de mis bienes, tanto entierro como mandas, Instituyo y nombro por mis unicos y universales herederos a mis hijos Jesus Ma. Apolonia y Antonia del sobrante

de todos mis bienes, muebles, raises, derechos y acciones, tanto presentes como futuros.

Y por el presente reboco y anulo todos los testamentos, y demas disposiciones testamentarias que antes de ahora haya hecho por escrito y de palabra, o en otra forma, pa que ninguno valga ni haya Fe Judicial ni estrajudicialmte. exepto este testamento que quiero y mando se estime y tenga por tal y por mi ultima y deliberada voluntad o en la via y forma que mejor haya lugar en Derecho: Y en testimonio de lo cual pongo mi nombre y sello, y a mi ruego lo hace por mi Juan Saenze en la ciudad de Santa Fee a los Diez y Nuebe Dias del mes de Junio A. D. de Mil y Ochosientos y Sesenta Años.

Arruego de

JOSEFA LEYBA. [SELLO.]
JUAN SAES.

Atestado de Testigos

TERITORIO DE NUEVO MEX.,
Condado de Santa Fe:

La escritura antesedente fue dictada y firmada por la dicha Josefa Leyba, poniendo su nombre un testigo por no saber ella firmar, en nuestra presencia, y bien conocidos por ella a cada uno de nosotros, y ella en el mismo tiempo en su entero juicio, mente y memoria sana declaro la Dicha Escritura asi firmada ser su ultima voluntad Testamto. y nosotros a su solicitud de la testadora nos presenciamos en su presencia de ella emos firmado como testigoz hoy 19 de Junio A. D. de 1860.

ROQUE TUDESQUI. [SELLO.]
NEPOMOSENO APODACA. [SELLO.]
JUAN SAES. [SELLO.]

[Endorsement.]

Testamento de Josefa Leyva. 197.

19 MZO. 11 DE 1861.

Fue aprobado el testamento de la finada Josefa Leyva y declaro qe. la corte de letras de administracion fueren consedidas a Serafin Ramirez, siendo sus fiadores Roque Tudesqui y Gaspar Ortiz y Alarid, exijiendoles una fiansa de $300. Abaluadores Roque Tudesqui y Anto. Rodrigues, D. Bernard Koch presento una cuenta de mil pesos contra el estado de F. Beck pr. Dr. to.; presiencia del Admor. Greson, quien no hiso obgecion y la hayo justo, en rason a qe. estaba cierto estaban prestados tales serbicios, por lo cual la corte aprobo tal cuenta: y no habiendo otro asunto fue prorogada la corte hasta el lunes proximo y quedo sin aprobar la cuenta de mil pesos hasta que benga el admor.

TERRITORY OF NEW MEXICO,
County of Santa Fe, ss:

I, Manuel Delgado, clerk of the probate court and ex-officio recorder in and for the county and Territory aforesaid, do hereby certify that the foregoing three pages and eleven lines contain a true, full, and correct copy of the last will and testament of Ma. Josefa Leyba and the approval of said will as the same appears on file in my office.

In witness whereof I have hereunto set my hand and the seal of said probate court this 19th day of November, A. D. 1902.

[SEAL.]

MANUEL DELGADO,
Probate Clerk and Recorder.
By HILARIO BACA,
Deputy Clerk.

20 [Translation.]

Will of Maria Josefa Leyva.

WILL.

TERRITORY OF NEW MEXICO,
County of Santa Fe:

In the name of Almighty God, amen.

Know all men by these presents that whereas I, Maria Josefa Leyva, legitimate daughter of lawful marriage of Salvador Leyba and Maria Francisca Lobato, deceased, resident of the county and Territory aforesaid, and being now with sound mind and memory, and in my complete and full understanding, although I am now, by the will of God, somewhat sick and well advanced in life, and considering its uncertainty; therefore I make, order, publish, and declare this testament to be my only and deliberate will, and as a faithful Christian (Catholic, Apostolic, Roman), I believe in and confess the unspeakable mystery of the Most Holy Trinity, Father, Son, and Holy Ghost, and although really distinct, they are one only substance and one only true God. I believe in all that Our Holy Mother Church believes and confesses, and in this faith and belief I desire to live and die, and place myself under the intercession and protection of the Ever Virgin Mary, Our Lady and Mother of God, my Holy Guardian Angel, those of my namesake and devotion, in order that they may intercede for me, so that through the Most Precious Blood of Our Lord Jesus Christ my faults and sins may be forgiven and my soul taken to rest in the glory, amen. Therefore,

I order, publish, and declare this to be my last will and testament, to wit:

First. I commend my soul to God, who created it out of nothing, and my body to the earth from which it was formed, which it is my will shall be shrouded in accordance to the wish of my children and
21 buried in the cemetery or at the place where it may please them and my husband. They shall likewise arrange my funeral, humble, or as they may deem proper.

Item. I order my executors that for obligatory bequests there be given two dollars out of my limited estate; from the remaining portion of the fifth there will be paid the masses that they may deem proper without injuring my children in what little might come to them.

Item. I declare to have been lawfully married and blessed (in faese eccleciae) with Jose Eleuto Rodriguez, of which marriage we did not have or raise any children.

Item. I declare to have had, before marrying, six natural children, named Juan, Jesus Maria, Tomas, Albino, Apolonia, and Antonia, of which children there are living Jesus Maria, Apolonia, and Antonia,

whom I recognize as my legitimate children and descendants according to the laws.

Item. I order and declare that the two rooms in which my daughter Apolonia lives, and that formerly belonged to Manuel Leyba, my nephew, be delivered to my husband, it being his property by reason of having purchased it, as it is my will that he shall enjoy the right that belonged to me as profits by reason of having been purchased by him during the time of our marriage, I having so done in the presence of my children and with their consent.

Item. I declare to own some small property consisting of a house composed of one parlor and two rooms, another house under construction (except the stable room, which also belongs to my husband).

Item. I declare to own a small orchard contiguous to the same house, and a piece of land at the Alto de Los Armentas, with its boundaries and measurements set forth in its deed.

22 Item. I declare to own another piece of land at the Rancho de Los Tenorios, measuring 55 varas in width and in length from the Camino de los Carros to the hill (loma), as it is so known.

Item. I declare to own a poor house furniture, which shall be divided among my heirs.

Item. I declare that my son Jesus Maria shall not share anything in the three house rooms nor in the house under construction on account of having received his share; but if he should desire to bring into the mass what he has already received, he shall share equally with Apolonia and Antonia; but in the land he will share in the same proportion with the other heirs, as from this he has not received anything.

Item. I declare that I do not owe anyone a single dime.

Item. I declare that no one owes me.

Item. I declare that if anything has been omitted, I order my executors to bring it to the mass of my property in order that it may be divided.

And for the execution of this my testament and last will I name as my administrators and executors my husband, Jose Eleuto Rodriguez, and my son-in-law, Serafin Ramirez, to whom in solidum and to each one in particular I give faculty and power, such as by law is required in order that they may determine and execute it and likewise to pay and collect and execute it for themselves and without judicial intervention; it being to the end that after my death they shall take charge of my property and execute for themselves and scrupulously and ask them to do it conscientiously, to comply, pay, and distribute all in accordance with my will, which power will last them all the time that they may deem necessary, as I sufficiently extend it.

23 Item. I order that after complying and paying out all from my property, the funeral as well as the orders, I institute and name as my sole and universal heirs my children, Jesus Maria, Apolonia, and Antonia, of the remainder of all my real and personal property, rights, and interests, present as well as future.

And by these presents I revoke and annul all the testaments and other testamentary dispositions that I might have made before in writing, verbally, or in any other form, in order that none may be valid or have any judicial or extrajudicial faith, except in this testament, which I desire and order that it be esteemed and be had as such and as my last and deliberate will, or with that view and formality which may be legally proper.

In witness whereof I set my hand and seal, and at my request Juan Saenz does it for me, in the city of Santa Fe, on the 19th day of June, A. D. 1860.

At the request of

JOSEFA LEYBA. [SEAL.]
JUAN SAES.

Attested by witnesses.

TERRITORY OF NEW MEXICO, *County of Santa Fe.*

The foregoing instrument was dictated and signed by the said Josefa Leyba, a witness signing her name, she not knowing how to sign, in our presence, and she being well acquainted with each one of us, and she being at the same time in her complete judgment, mind, and sound memory, declared the said instrument, thus signed, to be her last will and testament, and we, being present at the request of the testator, signed as witnesses, this 19th day of June, A. D. 1860.

ROQUE TUDESQUI, [SEAL.]
NEPOMOSENO APODACA. [SEAL.]
JUAN SAES. [SEAL.]

24 [Endorsement.]

Will of Josefa Leyva. 197.

MARCH 11, 1861.

The will of the deceased Josefa Leyva was approved, and ordered by the court that letters of administration issue to Serafin Ramirez, his sureties being Roque Tudesqui and Gaspar Ortiz y Alarid, requiring them to give a bond for $300.00. Appraisers, Roque Tudesqui and Antonio Rodriguez.

Don Bernard Koch presented a bill for one thousand dollars against the estate of F. Beck, in the presence of the administrator, Greson, who made no objection and found it just for the reason that he was certain that the services had been rendered, in view of which the court approved such account. And there being no other business, the court was adjourned until next Monday, and the account of one thousand dollars remained unapproved until the administrator is present.

25 4.

Hijuela de lo que corresponde por su legitima herencia á Maria Antonia Leyba segun el reparto hecho y convenidos los herederos familiarmente el dia 11 de marzo de 1861 como herederos de la finada Ma. Josefa Leyva despues de deducidos; bienes para los gastos del funeral segun lo mandado en el testamento de la finada, a saber:

Pesos.

No. 1°. Le tocaron ocho vigas de una sala, una cocinita, y la mitad de la placita ó corralito; y mas nueve varas de tierra en la huerta lindando estas por el poniente con Ma. Polonia Leyba y por el oriente con tierras y el solar que se destino para pagos del funeral y gastos y por el sur el empedrado y por el norte la tapia que divide la tierra de Antonio Valdez valuado 75.00

	Pesos.
No. 2°. Mas le tocaron en el arrayo de S. Antonio en un pedazo de tierra 16½ varas en la cabecera del sur y 33 varas en la cabecera del norte; esto es el ancho de la tierra lo largo de sur a norte; son sus linderos del camino á las lomas todo valuado en $15.00	15.00
No. 3°. Mas le tocaron algunos trastes valuados	10.00
Total son	$100.00

Yo, J. Serafin Ramirez, ejecator testamentario y administrator de los bienes de la finada Ma. Josefa Leyva, certifico que los bienes arriba espresados son los mismos que le tocaron por su herencia á Ma. Antonia Leyba. Santa Fe, marzo 11 de 1861.

JOSÉ SERAFIN RAMIREZ,
Executor y admr. de los bienes del estado de Ma. Josefa Leyda.

Estampa veinticinco centavos. Estampa veinticinco centavos.

TERRITORIO DE NUEVO MEJICO,
Condado de Santa Fe.

Sepan todos por estas presentes que hoy dia 1° de octe. de 1864, yo, Jose Serafin Ramirez y Ma. Antonia Leyva esposa del primero, por y en consideracion á la suma de sesenta pesos a nosotros pagados por José Aguilar y Ma. Apolonia Leyva, en contrato legal que tuvimos, traspasamos en favor de los referidos José Aguilar y su esposa Ma. Apolonia Leyva, toda la pertenencia del valor de esta hijuela en la clausula bajo el numero primero, con excepcion de la tierra en el arroyo de S^n^. Antonio bajo el numero 2 y los trastes comprendidos en la clausula numero 3, pueslo vendido son las 8 vigas de la sala, la cocinita la mitad de la placita y las
26 nueve varas de tierra en la huerta; todo esto se halla bajo del numero primero de esta hijuela; es advertencia en este traspaso no esta comprendido en la venta el cuarto grande y la cocinita del mismo cuarto antes conocido por de Manuel Leyva, y que despues compraron la finada y su esposo José Electo Rodriguez; pues estos, á la fecha, son propiedad de Maria Antonia Leyva, esposa de Ramirez, a quien el mismo Ramirez, se las cedio en cambio de lo traspasado en este documento y dicho cuarto grande y cocina mencionados son propiedad de Ma. Antonia Leyva.

Y para constancia firmo yo y a nombre de mi esposa, este dia 1° de octubre de 1864.

JOSÉ SERAFIN RAMIREZ. [SELLO.]
MA. ANTONIA LEYVA. [SELLO.]

Testigos:
FRANCO. ESTÉBAN VALDEZ.
JUAN SAENS.

Tambien conste que por este documento le traspasamos y le damos en donacion las 16½ varas de tierra que están en el arroyo de S^n^. Antonio en el camino que va á los tanques y que constan en clausula 2 de la antecedente hijuela.

Santa Fe, oct^r^. 2, de 1864.

JOSÉ SERAFIN RAMIREZ,
Por Ma. Anta. Leyva.

Y yo, Maximo Martinez, uno de los jueces de paz, certifico el presente documento y en y por el condado de Sta. Fe, á favor de José Aguilar que dicho Ramirez y Antonia Leyva han vendido su propiedad con todo derecho por arriba del [illegible] retrocediendo por la casa antes conocida de Jesus Leyva por la linia de la casa de los vendedores el camino real.

Juramentado ante mi, Maximo Martinez, este dia 23 de dic^{e} de 1868, juez de paz.

JOSÉ SERAFIN RAMIREZ.

Certifico que la antecedente hijuela y traspaso han sido enregistrados por mi, hoy el dia 28 de diciembre, A. D. 1868.

TRINIDAD ALARID,
Escribano de la Corte de Pruebas.

27 TERRITORY OF NEW MEXICO,
County of Santa Fe, ss:

I, Manuel Delgado, clerk of the probate court and ex-officio recorder in and for the county and Territory aforesaid, do hereby certify that the foregoing two pages contain a true, full, and correct copy of the hijuela of Maria Antonia Leyba as the same appears of record in this office in Book "E," Record of Deeds, at pages 40 and 41.

In witness whereof I have hereunto set my hand and the seal of said court this 19th day of November, A. D. 1902.

[SEAL.]

MANUEL DELGADO,
Probate Clerk and Recorder.

By HILARIO RACA,
Deputy Clerk.

28 [Translation.]

Hijuela of what corresponds as her lawful inheritance to Maria Antonia Leyba according to the partition made and agreed to by the heirs among themselves on the 11th day of March, 1861, as heirs of the deceased Maria Josefa Leyva, after deducting the property for the funeral expenses as provided in the testament, to wit:

No. 1. She shared eight vegas in the parlor and small kitchen and half of the plasita (yard) or small corral, and besides nine varas of land in the orchard; these are bounded on the west by Maria Polonia Leyba, and on the east by lands and the lot set apart for the payment of the funeral expenses, and on the south, the pavement, and on the north, the

	Dollars. Cents.
fence which divides the land of Antonio Valdez, valued at ...	75.00
No. 2. She also shared at the Arroyo de San Antonio in a piece of land 16½ varas on the south side and 33 varas on the north side; that is, the width of the land; the length is from south to north, its boundaries being the road to the hills, valued at $15.00	15.00
Number 3. She also shared some kitchen utensils, valued at..	10.00
The total is....	$100.00

I, J. Serafin Ramirez, testamentary executor and administrator of the estate of Maria Josefa Leyva, deceased, certify that the property above set forth is the same that Maria Antonia Leyva shared as her inheritance. Santa Fe, March 11, 1861.

JOSE SERAFIN RAMIREZ,
Executor and Administrator of the Estate of Maria Josefa Leyva.

29 Stamp, twenty-five cents. Stamp, twenty-five cents.

TERRITORY OF NEW MEXICO,
County of Santa Fe.

Know all men by these presents that on this 1st day of October, 1864, I, Jose Serafin Ramirez, and Maria Antonia Leyva, wife of the first, for and in consideration of the sum of seventy dollars to us in hand paid by Jose Aguilar and Maria Apolonia Leyva, under a legal contract had between us, we transfer in favor of the said Jose Aguilar and his wife, Maria Apolonia Leyva, all the interest valued in this hijuela under clause number one, with the exception of the land at the Arroyo de San Antonio under number two, and the kitchen utensils mentioned in clause number three; what has been sold being the eight vigas of the parlor, the small kitchen, half of the placita (yard), and the nine varas of land in the orchard; all this is contained under number one of this hijuela. It is to be noted that by this deed it is not included in the sale the large room and the small kitchen of the same room formerly known as belonging to Manuel Leyva, and which afterwards the deceased and her husband, Jose Eleuto Rodriguez, purchased, as they are at this date the property of Maria Antonia Leyva, wife of Ramirez, and to whom the said Ramirez ceded in exchange for what has been transferred in this deed, and the said large room and the small kitchen aforesaid are the property of Maria Antonia Leyva.

In witness whereof I signed it, and in my wife's name, this 1st day of October, 1864.

JOSE SERAFIN RAMIREZ. [SEAL.]
MARIA ANTONIA LEYVA. [SEAL.]

Witnesses:
FRANCISCO ESTEBAN VALDEZ.
JUAN SAENS.

Let it also be known that by this deed we transfer and give in donation the 16½ varas of land located at the Arroyo de San Antonio, on the road leading to Los Tanques, and mentioned in clause number
30 two of the foregoing hijuela.

Santa Fe, October 2, 1864.

JOSE SERAFIN RAMIREZ,
For Maria Antonia Leyva.

And I, Maximo Martinez, one of the justices of the peace in and for the county of Santa Fe, certify the present document in favor of Jose Aguilar; that the said Ramirez and Antonia Leyva have sold their property with all the right, above of [illegible] the public road passing by

the house formerly known as of Jesus Leyva on the boundary of the house of the grantors.

Sworn to before me, Maximo Martinez, this 23rd day of December, 1868, justice of the peace.

JOSE SERAFIN RAMIREZ.

I certify that the foregoing hijuela and deed has been recorded by me this 28th day of December, 1868.

TRINIDAD ALARID,
Clerk of the Probate Court.

(Indorsement on cover:) File No., 18029. Supreme Court U. S., October term, 1902. Term No., 40. Mariano F. Sena, appellant, vs. The United States. Stipulation of counsel and addition to record. Filed December 1, 1902.

O

CLERK'S OFFICE 3197

FURTHER STIPULATION AND ADDITION TO RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 40.

MARIANO F. SENA, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

RECORD FILED JANUARY 23, 1901.
ADDITION TO RECORD FILED DECEMBER 16, 1902.

(18,629.)

5198

Supreme Court of the United States, October Term, 1902.

MARIANO F. SENA, Appellant,
vs.
UNITED STATES. } No. 40.

STIPULATION FOR ADDITION TO RECORD.

It is hereby stipulated and agreed by and between the said parties that the deed from Salvador Antonio Leyba to Juan Angel Leyba, bearing date August 9, 1834, and now in the Spanish and Mexican archives in the territorial capitol at Santa Fé, New Mexico, a copy and translation of which are hereto attached, shall be taken and considered as a part of the record in this cause as if it had been offered in evidence by the plaintiff at the original trial, reserving, however, to counsel for appellee the right to urge on the hearing any objections he may deem proper as to its competency, relevancy, legal effect, or probative force, or on any ground he may deem advisable, except the objection as to the time and manner of offering the same; and it is further agreed that the said copy and translation, with this stipulation, shall be printed as supplemental record in this cause, at the cost of appellant.

F. W. CLANCY,
Attorney for Appellant.
MATT. G. REYNOLDS,
Special Assistant to the Attorney General.

[SELLO REPUBLICA MEXICANA.]

Sello tercero, dos reales, para los años de mil ochocientos veinte y seis y ochocientos veinte y siete.

[Seals on the margin:]

[Sello valga para los años de 1828 y 1829.]
[Sello valga para los años de 1830 y 1831.]
[Sello valga para los años de 1832 y 1833.]
[Sello valga para los años de 1834 y 1835.]

En esta Ciudad de Santa fee y Capital de la Nueva Mexico a los nueve dias del mes de Agosto de mil ochosientos treinta y cuatro años ante mi el C. Juan Gallego Alcalde constitusional de primer nombrado en dha, ciudad y su jurisdision conparesieron presentes y por sus propias personas los C. C. Salvador Antonio Leyva y su hijo Juan Angl. Leyva vesinos de la referida ciudad a quienes doy fee conosco y dijo el primero q.e le donaba enagenaba vendia y traspasaba y en efecto le vendio dono y enageno y traspaso a su hijo Juan Angel Leyva todo mi dhro, q.e me biene por herensia y drho, en el rancho del Ojo del collote con sus casas y corrales juntamete. con la Merced en donde esta ubicado el mismo rancho cual fue dado a mi Avuelo p.r el Rey de España el dia veinteisinco de Mayo de milsetecientos veinteiocho

Y son sus linderos como sige A. S. por el Norte con tierras del Captn. Sevastian de Vargas por el Oriente con el camino q.e va de dho cuidad de Santa fee al ojo de San Marcos y por el poniente con tierras del pueblo viejo de la Sienega y por el sur la cuesta llamada el arrollo del Oregano

La q.e dije el dho, Salvador Leyva de haverle vendido traspasado y don ado y enajenado por el presio y cantidad de dosientos veinte y cuatro pesos de la tierra los q.e comfiesa haver recibido a su satisfasion y contento y q.e si algo mas vale o valer pueda de la demasia le hase gracia y donasion pura mera perfecta irrevocable q.e el drho, llama inter vivos y q.e le traspasa enajena en favor del citado Juan Angel Leyva to el drho, y Señorio q.e la dha, Merced tiene y para q.e gose de ella como fuere su voluntad vendiendola enagenando la sin q.e por el sus herederos y executores susesores no se le pondra embaraso alguno y si acaso se lo pusieran no seran oidos ni en juicio ni fuera del obligandose en este caso salir a la defensa hasta dejarlo en quieta y pasifica posesion para cuyo sanamiento y cumplimiento de esta escritura obliga su persona bienes havidos y p.r haver todo sugeto a la leyes de la materia

Todo lo cual otorgo ante mi el referido Alcalde constitusional y ante los de mi ass.a con quienes atuo y doy fee por recetoria suplicandome interpusiera mi autoridad y drho, judicial y yo dho, Alcalde dije q.e la interponia interpuse cuanto por drho, me es comferido en cuyo testimonio la firmo con migo y los de mi ass.a de q.e doy fee.

SALVADOR ANTONIO LEYVA. X.

Testigo:
PEDRO LOVATO. [RUBRICA.]

JUAN GALLEGO. [RUBRICA.]

Testigo:
MGL. ANTO. RUBIO. [RUBRICA.]

De assa.:
ESQUIPULA PAHECO. [RUBRICA.]

De assa.:
JUAN GARCIA. [RUBRICA.]

TERRITORY OF NEW MEXICO, }
County of Santa Fé. }

I, the undersigned, librarian of the Territory of New Mexico, and custodian of Spanish and Mexican archives, do hereby certify that the foregoing is a full, true, and perfect copy of a deed executed by Salvador Antonio Leyva in favor of Juan Angel Leyva, as the same remains on file in my office as a part of said archives.

Witness my hand this 9th day of December, 1902, at Santa Fé, New Mexico.

L. EMMETT,
Territorial Librarian.

(*Translation.*)

[SEAL MEXICAN REPUBLIC.]

Third seal, two reals, for the years of one thousand eight hundred and twenty-six and eight hundred and twenty-seven.

[Seals on the margin:]

[Seal, validated for the years 1828 and 1829.]
[Seal, validated for the years 1830 and 1831.]
[Seal, validated for the years 1832 and 1833.]
[Seal, validated for the years 1834 and 1835.]

In this city of Santa Fé and capital of New Mexico on the ninth day of the month of August, one thousand eight hundred and thirty-four, before me the citizen Juan Gallego constitutional alcalde of first appointment in said city and its jurisdiction, appeared present in their own proper persons the citizens Salvador Antonio Leyva and his son Juan Angel Leyva residents of the said city whom I certify that I know and the first said that he was giving aliening selling and conveying and in effect did sell give and alien and convey to his son Juan Angel Leyva all my right which comes to me by inheritance and law in the rancho of the Coyote Spring with its houses and corrals together with the grant in which the said ranch is situated which was given to my grandfather by the King of Spain the twenty-fifth day of May one thousand seven hundred and twenty-eight

And its boundaries are as follows to wit on the north by lands of the Captain Sebastian de Vargas on the east by the road which goes from the said city of Santa Fé to the spring of San Marcos and on the west by lands of the old pueblo of the Cienega and on the south the hill (*cuesta*) called the arroyo of the Oregano

Which I the said Salvador Leyva declared to have sold conveyed and given and aliened for the price and quantity of two hundred and twenty-four dollars of the country which he confesses to have received to his satisfaction and content and that if it be or may be worth more he makes to him of the excess pure absolute perfect irrevocable gift and donation which the law calls *inter vivos* and that he conveys aliens in favor of the said Juan Angel Leyva all the right and dominion which the said grant has and in order that he may enjoy it as he may wish selling it aliening it without any impediment interposed by him his heirs and executors successors and if by chance they should interpose it they shall not be heard neither in court nor out of it binding himself in that case to come to the defense until he be left in quiet and peaceful possession for whose indemnification and fulfilment of this deed he binds his person and property present and future all subject to the laws of the matter.

All of which he executed before me the constitutional alcalde aforesaid and before those of my attendance with whom I act and certify as delegate judge asking me I should interpose my judicial authority and power and I said alcalde declared that I was interposing and did interpose it as far as by law is conferred upon me

in testimony of which he signed with me and those of my attendance to which I certify.

SALVADOR ANTONIO LEYVA. X

Witness:
PEDRO LOVATO. [RUBRIC.]

JUAN GALLEGO. [RUBRIC.]

Witness:
MGL. ANTO. RUBIO. [RUBRIC.]

Attending:
ESQUIPULA PAHECO. [RUBRIC.]
Attending:
JUAN GARCIA. [RUBRIC.]

[Endorsed:] File No. 18,029. Supreme Court U. S., October term, 1902. Term No. 40. Mariano F. Sena, appellant, *vs.* The United States. Stipulation and addition to record Filed Dec. 15, 1902.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 235.

MARIANO F. SENA, APPELLANT,

vs.

UNITED STATES OF AMERICA.

Appeal from the Court of Private Land Claims.

Now comes the appellant herein, and moves the court to cause testimony to be taken in addition to that given in the court below, relative to the confirmation, under the royal ordinance of 1754, of the grant made to Joseph de Leyba in 1728, and to the occupation of the grant, and claim of ownership thereof, by the descendants of the original grantee. And in support of this motion, he files herewith his affidavit, a copy of the will of Zimeon de Leyba, made in 1783, certified by the present custodian of Spanish archives at Santa Fe, a photographic copy of said will, a translation of the same, and the affidavit of Felipe Pino: and submits the accompanying statement and argument of counsel.

F. W. CLANCY,
Counsel for Appellant.

Affidavit of Appellant.

In the Supreme Court of the United States.

October Term, 1901.

No. 235.

MARIANO F. SENA, *Appellant*,
vs.
UNITED STATES OF AMERICA.
} Appeal from the Court of Private Land Claims.

STATE OF COLORADO,
County of Arapahoe.
}

Mariano F. Sena, being duly sworn, on his oath says that he is the appellant in the above entitled cause and resides at Santa Fe, New Mexico; that up to the time of the trial of said cause in the court of private land claims, he believed, and had been advised by counsel, that the evidence presented on his behalf on said trial would be sufficient to entitle him to a confirmation, and that similar claims had been confirmed by said court with no better, stronger or greater amount of, evidence; that after the decision of said court of private land claims rejecting his claim for the reason that there was not evidence showing a compliance with the provisions of the royal ordinance of 1754, he was advised by counsel that the law provided that the supreme court of the United States, on appeal in such a case, may cause testimony to be taken in addition to that given in the court below, and that it was therefore important that efforts should be made to secure additional evidence, documentary or oral, for presentation to the supreme court of the United States, to show possession and occupation of the land in question by the original grantee and his descendants for a sufficient length of time to raise a conclusive presumption that the provisions of said ordinance of 1754 were complied with, it being probable that no direct

evidence of confirmation under that ordinance could be found; and he was further advised by counsel that there was a possibility of finding such documentary evidence in the disorderly, confused and unindexed mass of Spanish and Mexican archives in the Territorial Library at Santa Fe, although in 1855, when the office of the surveyor-general for New Mexico was organized, an attempt was made to separate from the archives of the former governments all papers relating in any way to land titles and to place them in the office of the surveyor-general, which attempt was not entirely successful, as is shown by the fact that more than twenty-five years later a territorial librarian found in those archives, and transferred to the office of the surveyor-general, several hundred such papers affecting titles to land, and, as affiant is informed and believes, by the further fact that, even since the creation of the court of private land claims, a number of such papers have been found in said archives.

Affiant further says that thereafter he, and his counsel, two in number, at intervals, from time to time, as the demands of their ordinary occupations would permit, severally devoted a great deal of time, in the aggregate amounting to weeks of labor, to the close and careful examination of papers in said archives, but he believes that they have not been able to examine as much as one-third of all of said archives; that on the 25th of June, 1901, one of his counsel, Mr. H. S. Clancy of Santa Fe, informed him that he had on the day previous found in said archives, the original will of Simon de Leyba, the son of the original grantee Joseph de Leyba, made in the year 1783, showing occupation of the grant in question and claim of title thereto under the original grant, down to a date nearly sixty years after the making of the original grant, the genuineness of which has never been questioned; that he has seen and examined the said original will, and that a careful and accurate certified copy and translation thereof have been made

and as well a photographic reproduction thereof, which will be filed and submitted with this affidavit.

Affiant further says that he has thus far been unable to find living witnesses other than those who testified on the trial (with the exception of the two hereinafter mentioned), to testify to occupation and claim of title by the Leybas within their memory, and that this is probably due to the fact, as he is informed and believes, that the Leybas ceased to live upon, or continuously occupy, the land, after the death of Juan Angel Leyba at the hands of hostile Indians, which must have taken place about sixty years since; but he is informed that such witnesses exist and believes that if opportunity is given by order of the Supreme Court of the United States, he can procure their attendance and evidence; that one of whom he has learned, Ines Apodaca, lives at a considerable distance from his place of residence, and he has been unable, up to this time, to visit her in person, owing to lack of means and domestic afflictions, he being at the present time in the city of Denver with a sick wife for medical attention which can not be had in New Mexico.

Affiant further states that the witnesses of whose existence he has learned are as follows:

1st. Ines Apodaca, who lives at a small settlement or locality, called Gallego in the County of Bernalillo, New Mexico, distant some fifty miles from Santa Fe in a remote and unfrequented place in the mountains; that affiant is informed and believes that Ines Apodaca was the wife of Juan Angel Leyba and the mother of Salvador Leyba, since deceased, from whom he purchased an interest in said grant; that he had been informed by Salvador Leyba that his mother could testify as to the occupation of said grant by the Leybas, and that he would have endeavored to procure her attendance as a witness upon the trial of said cause in the court of private land claims, had he not been informed shortly prior to said trial that she was dead; that subse-

quent to said trial, he was informed that she was still alive, in the neighborhood of ninety years of age, and totally blind; that this affiant through an agent named Agustin Muller, who lives in the vicinity of Gallego, endeavored to procure information from Ines Apodaca upon which to base an affidavit, but was informed by his said agent that the relatives of this aged woman refused to allow anyone to have communication with her; but this affiant believes that by the service of proper subpoena, her testimony can be procured; and he further believes that she will testify that either her husband Juan Angel Leyba, or her father-in-law Salvador Antonio Leyba, lived at the Coyote Springs and occupied and claimed the land in that vicinity under a grant made by the King of Spain to Joseph de Leyba.

2nd. Felipe Pino, a resident of Santa Fe, New Mexico, whose affidavit showing what he can testify to, is herewith filed.

M. F. SENA.

Subscribed and sworn to before me this 29th day of October, 1901.

CHARLES W. BISHOP.
Clerk U. S. District Court,
District of Colorado.

[Seal of the
United States District Court,
District of Colorado.]

Translation of Will.

In the name of Almighty God, the Father, amen. All who may see this writing of my testament that I, Zimeon de Leiba, finding myself in my sound and entire judgment, memory, as testament and will, I have believed as I firmly believe in the Mystery of the Most Holy Trinity, God the Father, God the son, God the Holy Ghost, and one single, true God, and in all the other things which Our most Holy

Roman Apostolic Catholic Mother Church believes and ordains, in which faith and belief I have lived and declare that I will live and die, and finding myself at my ranch, far from my house, and having received a mortal blow from an unbroken mule, and believing myself unable to live nor my body to be moved, I command and order, before dying, my last will of my testament be made that all may see it, in the following form, to wit:

Firstly. I send my body to the earth of which it was formed, and my soul I commend to God, Our Father; that my body be buried at the Chapel of San Miguel in Santa Fe, near my residence, and being at a proper hour, let it be with a mass of bodily presence.

Item. I declare and direct that there be paid nine days of masses for the repose of my soul in the parish church of Our Father, Saint Francis, by the Reverend Father Hozio.

Item. I declare firstly that I have been married and nuptually blessed according to the rules of our Holy Mother Church with Feliciana Gonzales, already deceased some years, in which marriage we procreated one son, Salvador Antonio, whom I recognize as my sole heir.

Item. I declare as my property, the house of my residence at Analco which is composed of six rooms, a corral and stable, an interior court (placita) and a garden.

Item. I declare that I owe nothing to any one.

Item. I declare that Francisco Anzuras owes me seventeen dollars of the country, which I direct shall be collected.

Item. I declare that Francisco Coris, a native of the Pueblo of Santo Domingo owes me fifteen she-goats and ten breeding ewes, which I direct shall be collected.

Item. I declare for my country property, that I have twenty-seven breeding cows and four yoke of oxen, five range bulls, ten yearling heifers and five over a year old.

Item. I declare that I have thirty-two she-goats without the little ones.

Item. I declare that I have a small herd of mares, two broken horses, one unbroken mule, five asses, two unbroken and three broken, which are in the possession of Antonio Riega at the Arroyo de Piedra.

Item. I declare that I have two sculptured saints and one Holy Christ of bronze, one large carpet of twenty-six Castilian varas, one canopy, two bedsteads, one large copper kettle, one small copper kettle, and one small kitchen tripod.

Item. I declare that I have here one complete corn-crib.

Item. I declare that I have one piece (suerte) of wheat-growing land adjoining the Tenorios.

Item. I declare that I have in my possession the sabre of my deceased father, which I direct shall be delivered to my son Salvador.

Item. I declare that I have an old trunk of raw-hide in the house of my residence at Santa Fe.

Item. I declare that I have a pistol, a cartridge-box, and a Spanish gun.

Item. I declare that I have a grant of lands given by the King of Spain to my deceased father, Joseph de Leiba in 1728, and their boundaries are as follows:

On the south the slope (cuesta) called the arroyo of the oregano, on the north, the road which goes towards Pecos from the Cerrillos, or lands of the Captain Sebastian de Vargas, on the east with the road which goes from Santa Fe to the spring of San Marcos, on the west with lands of the old Pueblo of the Cienega, as appears by the original papers which are to be found in the trunk of my residence in Santa Fe. In said grant there is constructed a ranch at the Coyote spring, a small house, two rooms and a small kitchen, a little tower, a large corral of poles, two corrals for young animals, a corn-crib not very large with corn and beans, a hut (jacal) in the temporal lands. There is at my ranch my farming tools, six plows, two axes, two hoes, six yokes, three ox-goads, one loom, one spinning-wheel, three

skeins (of silk?), two wool cards, one adze, four pairs of yoke straps, four plough beam straps, one riding saddle complete. As. S.

And in order to complete this my testament and last will I order and appoint for my executor my son Salvador Antonio, and for its better validation and stability, I sent to supplicate and ask the Alferez Salvador Rivera that he should come here to my ranch, I not being able to move myself on account of my being accidentally wounded (or hurt), that he should interpose his authority, and said Alferez I said that I was executing and executed it, and I interposed my judicial authority and decree, I, said Alferez, Salvador Rivera, who am present at its execution, as far as I may be able and there is authority in law, and I certify and know that the testator is at the present moment in danger but in his sound and entire judgment according to the concurrence of reasons, that thus he executed it at this place of the Coyote Spring on the fifteenth day of the month of October in this year of 1783, and this took place before me the Alferez Rivera at request were called and asked, being witnesses to the making of this testament Francisco Antonio Zuaso, Antonio Riega and Jose Miguel Bachiha.

ZIMEON DE LEYBA

(Rubric)

SALBADOR RIVERA

(Rubric)

Witnesses

FRANCO. ATO. ZUASO

(Rubric)

ANTO RIEGA

(Rubric)

Witness

JOSEPH MIGL BACHICHA

(Rubric)

Affidavit of Felipe Pino.

In the Supreme Court of the United States.

MARIANO F. SENA, *Appellant*,
vs.
UNITED STATES *et al.*, *Appellees.*
No. 235.

TERRITORY OF NEW MEXICO,
County of Santa Fe.

Felipe Pino being first duly sworn, deposes and says: My name is Felipe Pino; I was born in the year 1839 at Santa Fe, New Mexico, and have lived there all my life. When I was about ten years of age, my father Jose M. Pino had a number of cattle ranging in the neighborhood of the Coyote Spring some twenty miles south of the City of Santa Fe, under the charge of Don Manuel Delgado who had a ranch near the locality called Los Cerrillos. At this time, together with a Santo Domingo Indian who was a peon of Don Manuel Delgado's, and a man named Pablo Padilla, I went to the Coyote Spring for the purpose of rounding-up and bringing to Santa Fe some oxen belonging to my father. I said to Pablo Padilla "What a beautiful place for cattle", and he answered "Yes, this land belongs "to the Leybas, who hold it under a grant made by the "Spanish government, but I don't know which one it be- "longs to now. The papers for the grant are in the posses- "sion of Josefa Leyba and they can be bought for a little "money. The people lambed their sheep and grazed their "cattle on this land by permission of Salvador Antonio "Leyba the father of Juan Angel Leyba. Juan Angel "Leyba was killed by the Indians." Don Manuel Delgado and a man named Juan Leyba who was employed by him, also told me the same thing, and it was generally understood, accepted as a fact, and so stated to me by the people living at the ranch of Don Manuel Delgado, that these lands be-

longed to the Leybas, and I have always had that understanding myself. I mean the lands lying between the Coyote Spring and the lands of La Cienega. I do not know the boundary calls of the grant in question in this suit.

At the time of my first visit to the Coyote Spring, as aforesaid, there were the ruins of a house close to the spring, with perhaps three rooms, the walls of which were some three feet high, a chimney, and a small torreon also in ruins, and I was told by the people with me and by other people subsequently that these were the ruins of the house of the Leybas, and that after the killing in that neighborhood of Juan Angel Leyba by the Indians, the house had been abandoned by the Leybas as it was not considered safe to live there longer.

I was well acquainted with Salvador Leyba, the son of Juan Angel Leyba. We were of the same age and went to school together, and he often told me that the lands in the vicinity of the Coyote Spring belonged to the Leybas by virtue of an old Spanish grant, and that his father had been killed there.

I was well acquainted with Maria Antonia Leyba and Serafin Ramirez with whom she was married. They acted as god-parents for a sister of mine. They had a son named Augustin Ramirez who is still living. I heard Serafin Ramirez tell my father that this Leyba grant belonged to his father-in-law, and ever since I was ten years of age I have known the lands in the vicinity of the Coyote Spring as the lands of the Leybas. I have not visited the spring since 1860.

FELIPE PINO.

Subscribed and sworn to before me this 6th day of September, 1901.

JOSÉ D. SENA,

[SEAL.] *Clerk Supreme Court of the Territory of New Mexico.*

ARGUMENT.

This application is made under the ninth section of the act of Congress creating the court of private land claims, which provides for the taking of appeals from the decisions of that court, and contains the following sentence:

> On any such appeal the supreme court shall retry the cause, as well the issues of fact as of law, and may cause testimony to be taken in addition to that given in the court below, and may amend the record of the proceedings below as truth and justice may require; and on such retrial and hearing every question shall be open, and the decision of the supreme court thereon shall be final and conclusive.

The object of appellant is to be allowed to submit evidence, discovered since the trial in the court below, as to which no lack of diligence can reasonably be imputed to him, for the purpose of meeting the objections to his case, set up in the opinion of the court of private land claims, and especially to supply exactly that for the lack of which the court decided adversely.

By reference to that opinion, which is printed as an addendum hereto, it will be seen that the court puts its decision specifically on the ground of a want of jurisdiction arising from a lack of evidence that the "requirements of the ordi nance of 1754 were ever complied with," or that "will justify a presumption of such compliance with the require ment for confirmation." On this ground the court held that the grant was imperfect, and, having been filed after the expiration of the time limited by the eighth section of the act of Congress, was, for that reason, beyond the jurisdiction of the court.

The royal ordinance referred to, provides, as stated in the opinion, "That all grants made subsequent to 1700, unless already confirmed by royal order of the King, or his viceroys, or presidents of the audiencias of the several dis-

tricts embracing the lands granted, should apply for such confirmation as a prerequisite to validity."

The evidence, which appellant now desires opportunity to present, is clearly sufficient to raise a conclusive presumption that the requirement for confirmation i n the ordinance of 1754 was complied with.

The will of Zimeon de Leyba, dated October 15, 1783, has been found among the Spanish archives in charge of the territorial librarian at Santa Fé. There is a very large quantity of these archives, in a disorderly mass, without index or any arrangemeut by which to guide an investigator, except that there has been some attempt, imperfectly executed, to arrange them in chronological order. At the time of the organization of the office of the surveyor general for New Mexico, in 1855, the persons charged with that work tried to separate from the Spanish and Mexican official papers at Santa Fé, all those which related to land titles, to be used in the new office. This work was not thorough. After 1880, a territorial librarian, who was conversant with Spanish, found and delivered to the surveyor general several hundred archives relating to land titles, and even since the organization of the court of private land claims, in a number of cases claimants have been so fortunate as to find documentary evidence among these papers. The will now produced would not, upon any casual investigation, appear to have anything to do with land.

The will of Zimeon de Leyba shows that it was made in 1783, at his ranch at the Coyote Spring, on the grant in question in this case, where he had been mortally wounded by a wild or unbroken mule, and believed that he was about to die. In the will, as was the custom of that time, he attempts to enumerate his possessions, and, among other things, declares that he has a grant of lands, given by the King of Spain to his deceased father, Joseph de Leiba, in 1728, and he sets out the boundaries, which, while slightly varying from those specified in the original grant, show the

identity of the land beyond all doubt. He further sets out the existence of a house, tower (*torreon*) and other improvements, showing occupation, cultivation and claim of title. These towers, such as he mentions, were small, circular houses used for purposes of refuge from attacks by Indians.

This shows, as conclusively as can be shown 128 years later, that for 55 years the original grantee and his son had owned, claimed, occupied and used the land embraced in the grant, and that, nearly thirty years after the ordinance of 1754, the son was in actual possession and claiming ownership. Certainly, this fully meets the specific ground upon which the court below made its decision, and a large part of the other objections adverted to in the opinion, and would have led to a different result had it been presented on the trial. The presumption is irresistible of compliance with the ordinance of 1754.

United States *vs.* Chavez, 175 U. S. 521–2–3.

The testatator also declares his wife to have been Feliciana Gonzales, and his only son and heir to be Salvador Antonio Leyba. This corroborates and agrees with the testimony on the trial, where it was shown, by church records, that Joseph de Leyba was married in 1739, and that, in 1760, Salvador Antonio Leyba, legitimate son of Simon de Leyba and Feliciana Gonzales, was baptized. The custodian of the church records testified that there was not in existence any record of baptisms earlier in date than 1747. The appellant's title is by purchase from grandchildren of Salvador Antonio Leyba, who had several children (this was shown by oral evidence), two of whom were named Juan Angel and Josefa, the first of these having been killed by Indians not far from his house at the Coyote Spring.

It is shown by the appellant's affidavit that he has, since the trial below, learned that Ines Apodaca, widow of this Juan Angel Leyba, who was killed by Indians, is still alive, contrary to earlier information that she was dead,

although very old. Obviously, she can testify as to occupation and claim of ownership by her husband at the time he was killed, and perhaps by others of the family. Attention is invited, in this connection, also to the affidavit of Felipe Pino. Appellant seeks opportunity to present the testimony of this widow and of Mr. Pino, and possibly of other witnesses.

With the motion are printed the affidavit of appellant, a translation of the will, and the affidavit of Felipe Pino. It has not been thought advisable to print the will in Spanish, although the certified copy in that language is filed in the office of the clerk, nor to attempt to print any reproductions of the will, it having been found impracticable to do so. A photograph of the will, reduced in size one-tenth from the original, which would not lend itself to further reproduction either by photography or photo-lithography, is also filed in the office of the clerk.

It should be said, in explanation of some peculiarities of phraseology in the translation of the will, that the effort has been faithfully to reproduce the original, which appears to have been written in great haste, as would be natural under the circumstances, and by a man of but little education or skill in the making of such documents.

It is respectfully submitted that "truth and justice" require that the motion of appellant be granted. The additional testimony can probably be taken before the case can be reached for argument in this court.

F. W. CLANCY,
Counsel for Appellant.

Opinion of the Court Below.

In the United States Court of Private Land Claims, Santa Fe, New Mexico, April Term, 1900.

MARIANO F. SENA, No. 278, *vs.* UNITED STATES. } Jose de Leyba Grant.

The title papers and documents produced from the archives of the Surveyor General's office and received in evidence in this case show that the grant in question was made to Jose de Leyba by the Governor and Captain General, Bustamante, in the name of the King of Spain in the year 1728, and that possession was formally given to the grantee of the land petitioned for and granted.

The evidence as to settlement and occupation of the tract purporting to have been granted, continuity of possession, cultivation, residence, improvement, claim of ownership, notoriety of the grant, and knowledge of its existence in the community or by the oldest inhabitants now living, is so vague, contradictory and uncertain as to be almost wholly wanting.

The question of boundaries of the tract claimed was one of serious contention upon the hearing of the case, involving as it does the patent titles and other conflicting interests of adverse claimants to lands embraced within the boundaries claimed under the grant title.

Upon consideration of the state of facts presented, the court has reached a conclusion which may be briefly stated. The first question arising is, what is the character of this grant, whether perfect or imperfect? It is claimed by petitioner to be a perfect grant, and, therefore, could be brought into this court at any time, or not at all, under the statute. Inasmuch as the grant was made at the date mentioned, 1728, it falls under the requirements of the Royal Ordinance of 1754, which provides that all grants made subsequent to

1700 unless already confirmed by royal order of the King, or his viceroys, or Presidents of the Audiencias of the several districts embracing the lands granted, should apply for such confirmation as a prerequisite to validity. There is no evidence in this cause, either by the documents presented or otherwise, that these requirements of the ordinance of 1754 were ever complied with. Nor is there in the nature of the case or upon any of the facts in evidence any grounds that will justify a presumption of such compliance with the requirement for confirmation. It therefore follows that this grant must be held to be not a perfect but an imperfect grant. And as such imperfect grant it is subject to the provision of the act creating this Court requiring the petition for confirmation herein to be filed within two years, but since this case was not brought or filed in this court until the present year, we must hold that it is barred by this statute of limitations, and hence must dismiss the case for want of jurisdiction under the said statute.

W. F. STONE,
Associate Justice.

Office Supreme Court U.S.
FILED
DEC 4 1902
JAMES H. McKENNEY,
Clerk.

40.

BRIEF FOR APPELLANT.

H. S. Clancy for Appt.

Filed Dec. 4, 1902.

Supreme Court of the United States.

OCTOBER TERM, 1902.

No. 40.

MARIANO E. SENA, APPELLANT,

vs.

UNITED STATES OF AMERICA.

Appeal From the Court of Private Land Claims.

H. S. CLANCY,
F. W. CLANCY,
Counsel for Appellant.

Law Reporting Press, Washington, D. C.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1902.

No. 40.

MARIANO F. SENA, APPELLANT,

vs.

UNITED STATES OF AMERICA.

STATEMENT OF CASE.

Claimant bases his claim upon a grant made May 25, 1728, by Governor and Captain General Juan Domingo de Bustamente, to Joseph de Leyba, and copies and translations of the papers evidencing the grant, appear at pages 110 to 113 of the printed record, as Plaintiff's Exhibit A. These papers come from the government archives, and their genuineness and authenticity have never been disputed, but were recognized by the court of private land claims in its opinion (*Record, p. 240*). That court rejected the claim, holding there was a lack of jurisdiction on the ground that the evidence did not show a perfect grant, the petition not having been filed until after the expiration of the two years limited by the act of Congress for the presentation of imperfect titles. The specific ground for holding the title to be imperfect, as set out in the opinion of the court, was that there was no evidence that the requirements of the royal ordinance of 1754 were ever complied with, nor any grounds

to justify a presumption of compliance with those requirements. As the opinion states, that ordinance required that all grants made after 1700, unless already confirmed, "should apply for such confirmation as a prerequisite to validity."

It is well to say here, at the outset, that, whether the court below was right or wrong in this holding, the objection is fully met by evidence discovered since the case was decided below,—evidence which has been submitted to, and received by, this court,—in the face of which the court of private land claims would never have decided as it did, and which makes the case now presented entirely different from the one decided by that court. It shows possession and claim of ownership under the grant for more than fifty-five years after it was made,—a sufficient time to raise every presumption which may be necessary to a decision that the title is perfect. After the decision in the court below, the plaintiff, as appears from his affidavit filed in this court on the day of November, 1901, was advised by his counsel that it was "important that efforts should be made to secure additional evidence, documentary or oral," for presentation to this court,—

> "to show possession and occupation of the land in question by the original grantee and his descendants for a sufficient length of time to raise a conclusive presumption that the provisions of said ordinance of 1754 were complied with, it being probable that no direct evidence of confirmation under that ordinance could be found";

and he was further advised—

> "that there was a possibility of finding such documentary evidence in the disorderly, confused and unindexed mass of Spanish and Mexican archives in the Territorial library at Santa Fe."

After long and protracted search among those archives, in June, 1901, there was found the will of Simon de Leyba,

son of the original grantee, made in the year 1783, which shows occupation and use of the land and claim of title thereto under the grant more than fifty-five years after it was made. This will has been received by this court in evidence, and appears at page 247 of the Record. No question is raised as to its genuineness, as, indeed, none could be, coming as it does from the official archives of a former government. Had this will been before the court of private land claims, it could not possibly have decided as it did. It is to be noted that the will, of which nothing was known at the time of the trial, corroborates the oral evidence then given as to who were the son and grandson of José de Leyba, the original grantee, and removes any possible doubt as to the correctness of the claim that the persons from whom plaintiff acquired his title, were descendants of José de Leyba.

We will proceed to a statement of plaintiff's case. An examination of the grant papers will show that they are regular and complete in form and substance. There is a petition by the grantee to the governor, a grant by that officer and an act of possession by the chief alcalde of the villa of Santa Fe. The grant was then complete. The boundaries set out are—

on the east, the San Marcos road;
on the south an arroyo called Cuesta del Oregano;
on the west, lands of Juan Garcia de las Rivas;
on the north, lands of Sebastian de Vargas.

There was an attempt in the court below by the government to show that the grant was of a very small piece of land close to Santa Fe, but all possible doubt as to the proper location being as claimed by plaintiff, is removed by the later-discovered evidence already mentioned, and we

anticipate that there will be no renewal of this attempt in this court.

Plaintiff put also in evidence (pp. 113–4 of Record) a deed of Joseph Castellanos, dated August 12, 1701, to Miguel Garzia de la Riba, conveying the sitio of the old pueblo de la Cienega. This is from the old Spanish archives, and was offered for the purpose of showing where were the lands of Juan Garcia de las Rivas, given as the western boundary of the grant, the Cienega being well known. That the lands of the Cienega are our western boundary is made clear by the will of Simon de Leyba, made in 1783, which was not before the court below.

Next in evidence is an entry in the book of the Cabildo, a part of the Spanish archives, under date of November 26, 1713 (pp. 115–6 of Record), which shows that Juan Garcia de las Rivas, was the son of Miguel Garcia, the grantee in the deed from Castellanos.

It should be stated that the book of the Cabildo was made in the year 1713, and in it was noted briefly the grants which had been made prior to that time and after the re-conquest of New Mexico. It was made and certified by General Juan Paez Hurtado, alcalde of Santa Fe.

Plaintiff also presented three deeds, and the opinion of the court of private land claims in the case of Purdy *vs.* United States (Exhibits I, J, K, and L, pp. 123 to 131 of Record), which show that the south boundary of the lands of Sebastian de Vargas was the road from Cerrillos to Pecos. These were offered to show the north boundary of the Leyba grant, and the will of Simon de Leyba, already mentioned, declares that the road was the northern boundary.

The eastern boundary, the San Marcos road, is so well known that it appears to have been taken for granted on the trial of the case. Its existence, course and direction are, however, definitely established by two witnesses for the United States.

Record, pp. 43, 44, 47, 54–55.

The southern boundary is not so clearly and definitely located as the other boundaries are. It is certain that it is between the Ojo del Coyote and the Ojo de San Marcos, which lies south of the Ojo del Coyote.

Record, pp. 72, 73, 86, 87, 93, 98.

To show his connection with the title to the property plaintiff put in evidence two deeds to him, made in 1895, one from Salvador Leyba (*Record, p. 116*) and the other from Maria Antonia Leyba de Ramirez (*Record p. 117*). Salvador Leyba in his deed describes himself as the son of Juan Angel Leyba and Inez Apodaca. He was dead at the time of the trial in the court below. Plaintiff testified that this Salvador told him he was the son of Juan Angel Leyba and of Maria Inez Apodaca; that his grandfather was Salvador Leyba, that the father of his grandfather was Simon Leyba, and the father of Simon was José de Leyba. Plaintiff testified also that he visited Maria Inez Apodaca who told him she had been married to Juan Angel Leyba and had only one child, Salvador Leyba (*Record, pp. 13, 14, 15*).

Plaintiff further testified that his grantor, Salvador Leyba, told him also that his grandfather, Salvador, was married to Maria Francisca Lobato and had four children, Manuela, Josefa, Juan Angel and another (*Record, p. 15*); that Josefa was the mother of three children, Maria Antonia, Jesus and Apolonia, before she was married, and that afterward she married but had no children by her husband (*Record, p. 24*).

Manuel Baca y Campos testified that he heard Salvador Leyba state that José Leyba was the original party to the grant, and that Simon Leyba was his son; that Salvador Leyba was a son of Simon Leyba, that Juan Angel Leyba was the son of Salvador Leyba; and that he, the speaker, Salvador, was the son of Juan Angel (*Record, p. 22*).

Agustin Ramirez testified that his father was Serafin Ramirez and his mother, Antonia Leyba; that his mother's mother was Josefa Leyba, whose father was Salvador Antonio Leyba; that the father of Salvador Antonio was Simon Leyba, and that the father of Simon was José Leyba. He also testified that Salvador Leyba was the son of Juan Angel Leyba, who was killed by the Indians a short distance from the property—that is, the grant in question—upon which he was living at the time, and that he was killed before he, the witness, was born (*Record, pp 97, 98, 99, 100*). The witness was 53 years old in August, 1900.

Upon cross-examination some effort was made to discredit this witness because he could not or would not tell who his mother's father was, and because his mother's name appears in certain records and deeds as Sandoval instead of Leyba. As to this, it should be remembered that other information shows that his mother was an illegitimate child, and that she signed her name only by a mark, being unable to write. (*Record, pp. 102–103*). It was shown also that Antonio Sandoval was her godfather (*Record, p. 110*).

This genealogical evidence is corroborated, in part at least, by the church records and by the will of Simon de Leyba, or Zimeon, as given in the will. The church records show the marriage of Joseph de Leyba, August 1, 1739, and the baptism of Salvador Antonio Leyba, son of Simon de Leyba and Feliciana Gonzales, February 1, 1770 (*Record, pp. 243, 244*). The baptism of Simon is not shown by these records, because no record of baptisms earlier than 1747 can be found (*Record, pp. 12, 13*). The will of Zimeon de Leyba declares that he was married to Feliciana Gonzales, and that they had but one child, Salvador Antonio (*Record, p. 246*).

No attempt will be made at this place to state the evidence of possession by the Leybas under the grant, as that can be done more appropriately in the discussion of the second and third points hereinafter set out.

It may seem hardly necessary to assign errors in a case which, under the statute, is here for a retrial upon the issues of fact, but in compliance with the general rule, the appellant has made the following:

ASSIGNMENT OF ERRORS.

In the Supreme Court of the United States.

MARIANO F. SENA, *Appellant*,
vs.
UNITED STATES OF AMERICA.

Now comes the said appellant by his counsel and says that there is manifest error in the record of the proceedings in the court of private land claims whence this cause came into this court, and for such error here specifies the following:

1. The court below erred in refusing to suppress the depositions of Susano Leyba and six others, the witnesses being all in attendance at the time of the trial (*Record, pp. 134–5*).

2. The court below erred in receiving in evidence, over objection of plaintiff, the papers designated as Defendant's Exhibits B, C, C1, D, D1, E, E1, F, F1, G, G1, H1, H, I, I1, J, J1, K and K1 (*Record, pp. 70 and 163 to 177*).

3. The court below erred in receiving in evidence the papers designated in the record as Defendant's Exhibits V, W, X and three deeds from Ramirez et ux. to McFerran et al., of May 19, 1866 (*Record, pp. 195 to 237*).

4. The court below erred in refusing to permit the witness Eligio Sedillo to testify to the statements made in 1876 by Manuel Bustamente as to the lands of the Leybas (*Record, p. 104*).

5. The court below erred in holding the title in question to be imperfect.

6. The court below erred in rejecting the claim of plaintiff.

7. The court erred in dismissing the petition of plaintiff.

Wherefore appellant prays that the decree of the court

below be set aside, vacated and altogether held for naught, and that such decree be here made by this court as to the court shall seem proper and as truth and justice may require.

H. S. CLANCY,
F. W. CLANCY,
Counsel for Appellant.

POINTS AND AUTHORITIES.

FIRST.

The Grant was Complete and Perfect When it was Made in 1728.

So far as can be learned, there does not appear to have been, in the early part of the eighteenth century, any limit to the power of a governor and captain general of New Mexico as to the granting of lands belonging to the royal domain. He was the representative of the king in this regard. It is true that he was subordinate to the viceroy at Guadalajara and reported to him his important official acts; but, so far as we are aware, he did not report to that superior officer the giving of lands to those who applied for them, nor did the viceroy ever give any attention to the making, revising, invalidating or confirming of any grant in New Mexico. So that there can be no reason to doubt the proposition that the title given by the governor in 1728 was complete. It is true that it was given "with the condition that he settle the same within the term prescribed by the royal ordinances," and we confess our inability to show what that term was at that time. In view of other evidence this is unimportant. The son of the grantee was in possession more than fifty-five years later, claiming and holding under this grant, which is sufficient to convince that all conditions had been met.

Attention is called to the language of the grantee's petition and of the act of possession, which shows the giving

of a title of the most absolute character,—quite equal to what we call a title in fee simple (*Record, pp. 112–3*).

SECOND.

Possession in 1783, Under the Grant of 1728, Shows a Perfect Title and a Compliance with the Ordinance of 1754.

The correctness of this position can not be doubted, especially in the light of recent decisions by this court.

United States v. *Chaves, 175 U. S. 520 to 524.*
United States v. *Pendell, 185 U. S. 189, 196–200.*

That such possession in 1783, is clearly shown, will appear by reference to the will of Simon de Leyba, which was not before the court below (*Record, p. 247*). The testator declares that he has a grant of lands given by the king to his deceased father, Joseph de Leyba, in 1728, and he sets out the boundaries of the land, which are so nearly the same as in the original grant that there can be no doubt of their identity. In the grant they are—

on the east, by the San Marcos road;
on the south, by an arroyo called Cuesta del Oregano;
on the west, by lands of Juan Garcia de las Rivas;
on the north, by lands of Captain Sebastian de Vargas.

In the will, the boundaries given, are—

on the south the slope (Cuesta) called the arroyo of the Oregano;
on the north, the road which goes towards Pecos from Cerrillos, or lands of the Captain Sebastian de Vargas;
on the east with the road which goes from Santa Fe to the spring of San Marcos;
on the west with lands of the old Pueblo of the Cienega.

That this is the same land admits of no question. As to the northern boundary by reference to the opinion of the court of private land claims, in the case of Purdy vs. United States, (*Record, pp. 126–7*), and to the deed made by Domingo Fernandez, (*Record, pp. 125–6*), it will be seen that the south boundary of Sebastian de Vargas was the road from Pecos to Cerrillos, which explains what the will says. As to the western boundary, the will gives the lands of the old Pueblo of the Cienega, while the original grant gives the lands of Juan Garcia de las Rivas, but this harmonizes with evidence given on the trial in the court below. The Spanish archive No. 732 (*Record, pp. 113–4–5*), is a deed of August 12, 1701, from Joseph Castellanos to Miguel Garzia de la Riba, conveying the sitio of the old Pueblo of the Zienega. This deed recites that General Diego de Vargas had granted the land to Bernabe Jorje, who sold it to Miguel Garzia de la Riba, who sold it to the Alferez Domingo de la Barreda, who sold it to Joseph Castellanos. This was undoubtedly one of the many grants made shortly after the reconquest of the country, of lands which had been occupied before the revolution of 1680, and it must have been made before 1698, as at that time Diego de Vargas was no longer governor, Pedro Cubero being then in office. The connection of Juan Garcia de las Rivas with Miguel is shown by an extract from the Book of the Cabildo,—a part of the Spanish archives,—dated November 26, 1713, from which it appears that Miguel was his father, and was then presumably dead (*Record, pp. 115–6*).

The will also declares that in said grant there was constructed a ranch at the Coyote spring, which is described, and the officer who drew the will certifies that it was executed "at this place of the Coyote Spring on the fifteenth day of the month of October in this year of 1783." The Coyote spring is clearly within the limits of the grant.

THIRD.

If, After October, 1783, Anything Occurred to Divest the Title, the Burden is on the Government to Show It.

Existence of ownership or possession, or both, being proved, it is a well-recognized presumption that they continue unless their cessation is proved by evidence, and the rule is that the burden of proof is upon him who disputes their continued existence.

Lazarus v. *Phelps, 156 U. S. 205.*
Gray v. *Finch, 53 Conn. 513.*
Leport v. *Todd, 32 N. J. L. 123.*
Bayard v. *Colefax, 4 Wash. C. C. 41–2.*
Kidder v. *Stevens, 60 Cal. 419.*
Table Mountain Co. v. *Wallers Co., 4 Nev. 220.*
Bates v. *Prickett, 5 Ind. 22.*
Lind v. *Lind, 53 Minn. 51.*
Anderson v. *Watt, 138 U. S. 706, and cases cited.*
Adams v. *Slate, 87 Ind. 575–6.*
Sullivan v. *Goldman, 19 La. Ann. 13.*
Thomas v. *Hatch, 3 Sumn. 182.*
Clements v. *Hays, 76 Ala. 280, 284.*
Cargile v. *Wood, 63 Mo. 514.*
Gilleland v. *Martin, 3 McLean, 491.*
Higdon's Heirs v. *Higdon's Lessees, 6 J. J. Marsh., 51.*
O'Gara v. *Eisenlohr, 38 N. Y. 299.*
Best on Presumptions, 186.

There is a legal presumption of continuance. A partnership once established is presumed to continue. Life is presumed to exist. Possession is presumed to continue. The fact that a man was a gambler twenty years since justifies the presumption that he continues to be one. An adulterous inter-

course is presumed to continue. So of ownership and non-residence.

Wilkins v. *Earle, 44 N. Y. 172.*

In 1840 it was held by the court of Queen's Bench that a custom of the city of London proved to have existed from time immemorial till 1689, must be taken to exist still, if there be no further evidence proving or disproving its existence. It appears that evidence was given of its exercise from an early period down to 1689, but no proof of its having been exercised, or interfered with, at any later time.

Scales v. *Key, 11 A. & E 819, 824–5–6.*

If the seizin of a party, at a given time, is proved or admitted, the legal presumption is that such seizin continues, and the burden of proof is on him who alleges a disseizin; and that burden remains on him, even after he has given *prima facie* evidence of a disseizin.

Syllabus in *Brown* v. *King, 5 Metc., 173.*
Currier v. *Gale, 9 Allen, 525.*

The plaintiffs, on the trial, having shown a clear documentary title to the premises in dispute, the defense rested solely on the claim of adverse possession. The burden of proof was, therefore, upon the defendants. It was incumbent upon them to establish the fact of adverse possession beyond a reasonable doubt.

Royland v. Updike, 28 N. J. L. 101.

Presumptions of law are rules of law, whether disputable or the contrary. If the disputable presumption is not contradicted or removed by evidence, it is a rule of law to be applied as inflexibly as a presumption that is indisputable or conclusive; in other words, a presumption of law that is disputable, when not changed by evidence, becomes to the court a rule indisputable for the case, and the court is bound to apply it.

> A status once established is presumed by the law to remain, until the contrary appears. (*See People v. Feilen, 58 Cal. 218*); or as a like rule is expressed, in the Code of Civil Procedure (*See Section 1963, subdivision 32*), "that a thing once proved to exist continues as long as is usual with things of that nature."
>
> *Kidder v. Stevens, 60 Cal., 419.*

In the court below, counsel for the government evidently recognized the correctness of this position as to the onus of proof, and made an effort to disprove the continued existence of the grant by the testimony of seven old men, who testified, in substance, to an entire lack of knowledge. They had never heard of a Leyba grant, nor of the lands of Juan Garcia de las Rivas, nor of any ruins near the Coyote spring, nor of the arroyo del Oregano, nor of the cuesta of that name. This is, in effect, all of their testimony so far as it touches the case. It is purely negative in character.

The court should give but little weight to it because—

1st, It was taken ex parte, by deposition;

2d, It is negative;

3d, With but one exception, the witnesses were not cross-examined;

4th, The one who was cross-examined showed utter ignorance not only of this grant, but of all others in that part of the country;

5th, The court below refused to compel the government to produce the witnesses for cross examination at the trial, although they were all in attendance.

These witnesses, and their ages, as they gave them in February, 1900, were Nasario Gonzales, 83; Jesus Narvais, 81; Francisco Romero, 82; Francisco Bustamente, 82; José Venavides, 73; Antonio Bustamente, 73; and Susano Leyba, 66; and their testimony will be found at pages 137 to 162 of the Record. It was taken before one of the justices

of the court below, on February 23, 1900, on the ground that the witnesses were "aged, infirm and ancient persons," and that it was "exceedingly improbable that said witnesses would be able to attend on the hearing of said cause in the court" (*Record, pp. 6, 7, 8*). By some unfortunate mischance or misunderstanding, although notice appears to have been given, counsel for plaintiff did not attend before Judge Stone when this testimony was taken; but, as a matter of fact, every one of the witnesses actually did attend at the trial, and plaintiff then asked the court to suppress the depositions for that reason (*Record, pp. 134–5*), which request was denied and afterwards plaintiff asked the court to require the government to produce the witnesses for cross-examination, which was also refused (*Record, p. 36*).

The basis of these applications by plaintiff will be found in the first sentence of rule 3 of the rules of practice of the court of private land claims, which is as follows:

> In all cases witnesses for either party shall be examined in open court upon the trial of the cause, unless they are sick, infirm, or otherwise unable to attend, and in that event either party desiring the testimony of such witness or witnesses shall make application to the court or any judge thereof to take the deposition of such witness or witnesses, and if it appears to the satisfaction of the court or judge that such witness or witnesses ought not or can not be compelled to appear in court and testify, the court or judge shall make an order allowing the deposition of such witness or witnesses to be taken.

It will be at once apparent that the object of this rule is to enable all of the members of the court to have opportunity to see the witnesses, hear them testify, observe their appearance and demeanor on the stand, and thus better qualify them to judge of the weight to be given to the evidence. It is obvious that the plaintiff was at some disadvantage because of his failure to cross-examine the witnesses, and that a fair regard for the requirements of the rule would

have been served only by putting on the stand in open court these witnesses, all of whom were actually in attendance at the time of the trial.

The assistant to the United States Attorney, who tried the case below, was apparently so much impressed with the force of the objections made by plaintiff that he did call on the trial one of these witnesses, Susano Leyba, who was only sixty-six years old, and presumably better able than the others to bear cross-examination, but the result of his cross-examination was such as to cause counsel for the government to desist from any further attempt to present these witnesses before the court. The witness not only developed entire ignorance on the subject of the Leyba grant, its reputed existence, its boundaries and any claim or occupation by the descendants of the grantee, but he also had never heard of the grant of Alonzo de Aguilar, or of José Miguel de la Peña, nor of the Cleto de Miera and Faustino Pino grant, nor of the Sitio de Juana Lopez grant, nor of the Sitio de los Cerrillos grant, nor of the Cerrillos grant, nor of the Pueblo Viejo de la Cienega, nor of the San Marcos grant. These questions related to four grants in that part of the country, one immediately south of the Leyba grant and the others west of the Leyba grant, which have all been confirmed by the land court, and yet this witness had never heard of their existence. (*Record, pp. 119, 120, 121, 182, 183, 192, and the map between pages 162 and 163*). The lack of knowledge displayed by the witness as to the Leyba grant can not have much weight, and it is not unfair to assume that if the six others had been subjected to the same examination, the same effect would have been produced.

A large part of the examination of these witnesses was devoted to the question of a road from La Cienega to Galisteo, and to showing that this road ran to the east of the Cerro Pelado, or bald hill, in which it appears there is a turquoise mine. Why this point was considered of any importance, is impossible to discover from anything in the

record, except from a statement by C. G. Coleman, a witness for the government, at page 49 of the Record, where he states that plaintiff had claimed that one boundary was along a road from Cienega to Galisteo. There is no word in the record to justify this, but it is evident that upon this mistaken idea, much testimony was taken to show that our alleged boundary would not include the turquoise hill; or this was a deliberate attempt, on the part of counsel for the turquoise company, to mislead and confuse the court by setting up a man of straw who could easily be overthrown. There had been absolutely nothing from the plaintiff to indicate that he ever made such a claim.

The government presented also the evidence of Pedro Muñiz (*Record, pp. 36–40*) and of J. P. McNulty (*Record, pp. 40–43*), which does not appear to be material to anything in controversy. These witnesses must have been called only to show that there was a turquoise mine within the grant, of great possible value, with the idea of discrediting plaintiff's case in some way, although it is difficult to understand this theory. It may well be assumed that plaintiff would not have purchased interests in such a grant, in 1895, unless he believed they were of some substantial value.

The next witness for the defense was Clayton G. Coleman, a special agent of the court of private claims, whose evidence appears at pages 43 to 54 of the Record. What he says is based upon an examination of the land embraced within the grant, and upon information received from people in that vicinity, and is of value as the evidence of an intelligent and truthful witness, but, in many particulars, is not entitled to great consideration, being hearsay in character, derived from living witnesses. He had no difficulty in finding the San Marcos road, which is the eastern boundary, and the road from Cerrillos to Pecos, which is the northern boundary. He says that he was unable to find the arroyo of the Cuesta del Oregano, or the lands of Juan Garcia de las Rivas, which formed the western boundary of

the grant. He does testify, however, on page 51, that there is a rise of land which divides the arroyo where the Coyote Spring is from the place where the San Marcos Spring is, the latter spring being south of the former, and on page 52 he shows substantially about the lands of the Cienega, which are shown upon the sketch map filed with the complaint at page 2 of the printed Record. In this connection, attention should be called to the fact that the three small grants which lie south of the Cienega, as shown on that sketch map, were made long after the grant of the Cienega, which, as already hereinbefore stated, must have been made before 1698, and at the time of the making of the grant of Joseph de Leyba in 1728, what was known under the name of the lands of the old Pueblo of the Cienega, probably extended further south than as shown on the map; but all record of that grant or of its extent has been lost. The nearest approach to any record of it which we have is in archive No. 732 (*Record, p 113*), which shows that it was a grant made to Bernabe Jorje.

Nasario Gonzales, one of the witnesses for the Government, testifies (*Record, p. 142*) that from some of the old title papers it appears that the land was granted to Juan Pais Hurtado, and from him was transferred to Manuel Tenorio de Alva. Of course, this statement can not receive much consideration, as opposed to what appears in Archive No. 732. In the report of the Commissioner of the General Land Office for 1885, at page 400, there is a list of the captains general and governors of New Mexico, from which it appears that Juan Paez Hurtado was governor and captain general in 1704, 1712, 1716, 1717 and 1735; while papers in the archives at Santa Fe show that Manuel Tenorio de Alva was living at Santa Fe as late as 1729. These facts, however, throw hardly any light upon the assertion of Gonzales, but it may possibly be the fact that Manuel Tenorio de Alva had some connection with the title to these lands after 1728.

Mr. Coleman testifies that the Ojo del Coyote is outside of the boundaries of the Leyba grant as claimed by the plaintiff (*Record, p. 46*); but on cross-examination it appears that he based this statement upon the fact that the spring is actually in section 2 of township 14 north, range 8 east, while the plaintiff in the sketch map filed with his petition had located it in section 34 of township 15 north. It is clear that plaintiff claimed the spring to be within the grant, but had merely mistaken its location with reference to the lines of the public land surveys. This witness also gives considerable attention to the road from Cienega to Galisteo, which it had been assumed was claimed as a boundary by the plaintiff in this case, as to which we have already commented. On the map prepared by him he has marked ruins of an old house built by Jesus Narvais, and on page 52 of the Record he says that this old house is about a mile from the Ojo del Coyote, and that Narvais himself told him that he had built the house about twenty years before. It is interesting to note in connection with this statement that other witnesses for the government, in an attempt to account for ruins near the Coyote spring, declare that these ruins of the house of Narvais were close to the spring. This is stated by Nasario Gonzales, at pages 138–9 of the Record, by Jesus Narvais at page 144, by Francisco Romero at page 149, by Antonio Bustamente at page 158, while Susano Leyba, at page 161, declares that there were no ruins at all. Counsel for the Government will agree that any evidence given by Colonel Coleman is worthy of belief, in the face of contradictory statements by a hundred such witnesses as these others.

Mr. William M. Tipton was also called as a witness for the government, but his testimony is confined entirely to the description of topography close to the city of Santa Fe and as to the genuineness of certain Spanish papers which were offered in evidence. His testimony and the documents offered were all in connection with a theory that the Leyba

grant was of a small piece of land just west of Santa Fe and just west of the San Marcos road near where it leaves Santa Fe. It requires no consideration at this time, as it is quite certain that this theory must be abandoned in view of what is contained in the later-discovered will of Simon de Leyba made in 1783.

The government also called Alejandro Montoya, about 77 years old (*Record, pp. 63 to 67*), who testified to his ignorance of any grant of José de Leyba and of the lands of Juan Garcia de las Rivas at Cienega and of the Pueble Viejo de la Cienega and of the Pueblito de los Leybas, and he also says that he never heard of the grant of Los Cerrillos, although he had heard of a grant by the name of Juana Lopez.

The last witness for the government was Gabriel Sena, 57 years old, who testified to a similar lack of knowledge of the claim of José de Leyba or of the existence of the Cuesta of the Arroyo de Oregano or of the lands of Juan Garcia de las Rivas.

Defendant's exhibits C to K1 (*Record, pp. 163 to 177*) were all introduced to support the theory of a Leyba grant close to Santa Fe.

In rebuttal, the plaintiff called Antonio José Campos, R. B. Willison, Agustin Ramirez, Eligio Sedillo and Fernando Nolan.

Campos testified that he was born in 1830, and was well aquainted with the country between Santa Fe and Galisteo from the time when he was 15 years of age; that he knew the pueblo of San Marcos and the Coyote spring to the north of the San Marcos spring, and that he knew the Arroyo de Oregano near the Coyote spring; that he had seen the ruins of a house near to the spring, which, when he first saw them, about 1853 or 1854, were a yard-and-a-half high, and that there were about three or four rooms to the house; that he had heard that these ruins were of houses of the heirs of José de Leyba, and that he heard this from a number of old

men whose names he gives, and that it was a matter of common knowledge. He says also that he heard from these old men that the people who lived in the house near the spring were driven away by Indians who, at the Cuesta del Oregano, killed a man named Juan Angel Leyba, the son of Salvador Leyba.

Mr. Willison testified that he had lived in Santa Fe for thirty-three years, and had been engaged all the time in his business of civil engineer and surveyor; that he was well acquainted with the country south of Santa Fe, as far as the Galisteo river; that he knew the lands in question and the boundaries of the grant; that he was acquainted with the lands of the Pueblo de la Cienega and with the Arroyo of the Cuesta del Oregano, which is something over a mile north of the spring of San Marcos, and near the Coyote spring. He testified that he had known the Coyote spring by that name for about thirty years, but did not remember having heard of the Cuesta del Oregano until about seven years before, although he might have heard of it. He said that he first visited the Coyote spring in the winter of 1869 and 1870, and that on the rocky slope leading down to the spring there were quite extensive ruins of what appeared to have been habitations, one chimney standing at least nine feet high with a fireplace, and that these ruins were sufficient to convince him that within quite a recent period they had been inhabited. He also said that he had been informed by Don Manuel Baca y Delgado (who was dead), about seven years before the trial, that these ruins had been occupied by the descendants of the original grantee in this case (*Record, pp. 86 to 88*). He further testified that the last time he had visited the Coyote spring was two days before the time when he testified, and that he then found very little evidence of there ever having been any habitations at that place; that he had previously been at that spring six or seven years before, and that in the interim the scattered stones had been hauled away evidently, foun-

dations and everything; that he could still discover some evidences of habitations, but very slight compared with what they formerly were; that when he first saw them there had been material for the construction of two or three ordinary-sized houses such as are used in New Mexico, but that when he had last seen the place there was not enough left to make the foundation for one side of an ordinary room (*Record, p. 89*). This is a most curious and extraordinary circumstance.

Agustin Ramirez, 53 years old, testified that he was the son of Serafin Ramirez and Antonia Leyba, and that his maternal grandmother was Josefa Leyba, who was the daughter of Salvador Antonio Leyba, who was the son of Simon, who was the son of José Leyba. He testified also that his mother had a sister, Apolonia Leyba, and a brother, Jesus Leyba; that Apolonia married José Aguilar, but had no children, while Jesus had a number of children of whom he gave the names of five; that Salvador Leyba, who lived at Peña Blanca, was an uncle of his mother,—this may be an error of interpreter or stenographer, as Salvador and Antonia were really cousins,—and was the son of Juan Angel Leyba, who was killed by the Indians a short distance north of the San Marcos spring some time before the witness was born. He said also that Juan Angel was the son of Salvador Leyba, and "lived upon the same property when the Indians killed him," about two or three miles from where he lived; that "he was going to the placer when they killed him, going up the slope, and he was about to go down the slope when they killed him." The witness also testified that he had heard of this grant from his mother, that it was 14 or 15 miles south of Santa Fe, "to the north from where the Coyote spring is," and that he had also heard from her about the Pueblito de los Leybas, but could not state where it is (*Record, pp. 97, 98, 99, 100*).

By "the placer" the witness referred to the place called Dolores.

At this point it seems appropriate to invite attention to some facts which may account for the lack of evidence of possession by the Leybas after the killing of Juan Angel, which probably occurred between 1840 and 1846.

This family, unlike many,—perhaps the majority,—of Spanish families in New Mexico, was not numerous. The original grantee, José de Leyba, had but one child, Simon, the one who made the will in 1783, and he in turn had but one child, Salvador Antonio, baptized in 1760. Salvador Antonio had but four children, one only of whom was a son, Juan Angel, who had but one child, Salvador, who must have been a mere baby when his father was killed. This is shown by Salvador's statement to plaintiff in 1895, that he was 56 years old (*Record, p. 13*), which accords with the affidavit of Felipe Pino, presented to this court last year, in which affiant says he was born in 1839, and that he and Salvador were of the same age and went to school together. It is not unreasonable to conclude that the adult males of this family, capable of occupying and using the land, were exhausted by the death of Juan Angel, and that the children, if any, of his sisters, settled in other places, never cared later to return to this land.

Upon the cross-examination of Agustin Ramirez, nothing was elicited to affect his testimony as to any material facts; but it was evidently the belief of counsel for the government that the witness was not telling the truth as to his mother's descent from the Leybas, and it was developed that he was unable or unwilling to tell who his mother's father was, and, later, it was shown, by documentary evidence, that her name was signed to a deposition and to deeds as Sandoval instead of Leyba, she being unable to write herself.

As to these things, we must remember that the mother of the witness was an illegitimate child, and, if he knew who her father was, he would have a natural and pardonable reluctance to give the information, even upon the witness stand, but probably he did not really know. The docu-

ments to which her name was signed as Sandoval, appear at pages 225 to 237 of the Record, and her deposition, taken in 1883, appears at pages 215 to 225. The documents were made in 1865 and 1866, when her husband, José Serafin Ramirez, was still alive. She probably never knew how her name was signed, being unable to read or write, and why her husband wrote it Sandoval, we can only conjecture. When her testimony was taken in 1883, the interested parties would want her name to be the same as in the deeds of 1866, and it is worthy of note that she was not asked what her name was (*Record, p. 215*). It is shown by the witness Fernando Nolan that his uncle, Antonio Sandoval, was her godfather (*Record, p. 110*).

Eligio Sedillo, 67 years old, was called to testify that, in 1876, when he was a flagman with a surveyor who was surveying the San Marcos grant, a very old man, named Manuel Bustamente, who had been brought as a witness by Nasario Gonzales, and was giving information as to the location of the boundaries of the grant then being surveyed, stated that the lands north of that grant and of the place where they fixed the northern boundary of that grant, were the lands of the Leybas (*Record, pp. 103–4*); but the court refused to receive this evidence, presumably on the ground that it was hearsay.

The witness also testified to ruins near the Coyote spring, about 1854, much the same as Campos (*Record, pp. 104–5*).

Plaintiff also introduced in evidence various documents (*Record, p. 105*), which have already been mentioned and referred to herein, in connection with the different points to which they relate.

To summarize plaintiff's case—

he has a grant made in 1728;

he has possession delivered to the grantee in 1728;

he has the presumption that that possession continues, which presumption must prevail unless overcome by evidence;

he has the fact that such possession actually continued until 1783 when Simon, the son of the grantee, was dying on the land, at the Coyote spring, as is distinctly declared by Simon's will;

he has the presumption that the possession existing in 1783 continues, which presumption must prevail unless overcome by evidence;

he has the fact that Juan Angel the grandson of Simon, was in possession at a date not fixed, but after 1839, and was killed by Indians not far away from the Coyote spring;

he has deeds from the son and niece of Juan Angel;

he has established the location and boundaries of the land;

he has the fact of ruins of houses at the Coyote spring at the place where Simon made his will in 1783.

To meet this case, the government has only the negative evidence of witnesses who have not heard or known of the grant or of the Leybas.

FOURTH.

A Complete Legal Title to Land once Vested Can not be Lost by Failure to Occupy.

Probably, no argument or citation of authority is necessary to support this position, certainly so far as titles under our common law system are concerned. It is well settled that failure to use and occupy land never divests the owner of his title. Something more is necessary before he can be deprived of the beneficial use of his land. Entry upon the land by some other person in hostility to him, and with the intent to claim it as the possessor's property, if continued for a sufficient length of time, will bar the real owner from his right to recover the possession, and, in effect, will give the intruder a complete title.

It is equally true under the Spanish law that mere failure to occupy land never operated to divest a title. It is true that under the Spanish law, a man might abandon his land with intention that it should no longer be his, and then it would become the property of the first who might take it. In this the essential and important ingredient was the intent of the owner, and it may well be questioned whether he might not resume his property at any time before another had taken it. It may be well to see just what is the Spanish law as to failure to occupy, and as to abandonment, although in the present case no evidence has been, or can be, produced tending to show any abandonment by the descendants of Joseph de Leyba with intent no longer to own the land.

The learned Escriche, than whom no higher Spanish authority exists, in his great work, states the law as follows:

> If an owner voluntarily abandons a thing, whether personal or real (*mueble ó raiz*) with intent no longer to count it in the number of his possessions (*bienes*), because it is useless or burdensome, or for mere caprice, he loses his ownership (*dominio*) and the first who occupies it (*or takes possession of it*) makes it his.

The author then points out certain things which are not to be considered as abandoned, such as goods thrown into the sea to lighten a ship, or those thrown on the shore from shipwrecks by the waves, or sheep or lambs carried away by wolves, etc., and finally "houses or lands which one leaves without daring to go or return to them on account of enemies or robbers." This was undoubtedly the case as to this property. Juan Angel Leyba was killed by the Indians about sixty years ago near his house on the grant, and it is a historical fact, of which the court will take notice, that down to the later sixties, life was never safe in New Mexico from attacks by the Navajos anywhere outside of the towns. Although not in the record, we trust it may not be improper

to say that the appellant in this case narrowly escaped death or capture by Navajos when he was a baby in the arms of his mother, who, traveling on horseback in the vicinity of the Cienega, was pursued for some distance by the Indians. This was after 1860.

A little further along in Escriche we find the following:

> Can it be presumed that he abandons his lands, with intent no longer to count them among his possessions, who absents himself for a long time without putting them in charge of anyone, or who, being present, leaves them entirely uncultivated through idleness, neglect or carelessness?
>
> As to the first case, undoubtedly the presumption of abandonment does not arise (*no tiene lugar*); since law 26 of title 12 of Partida 5, far from giving the lands of the neglectful absent one to the first person who may occupy and work them, on the contrary imposes upon him the obligation of caring for and managing them so that through his fault they are not lost nor deteriorated, and of accounting to the owner with credit for expenses, as if he were his agent.

He then goes on to say, in effect, that, as to the second case, there are countries where anyone can appropriate lands which the owner fails to cultivate through neglect, but he specifies only Languedoc and Aragon. In Languedoc lands are considered abandoned if the owner allows three years to pass without cultivating them, and without paying taxes. In Aragon, by the royal cedula of February 28, 1768, those lands which are irrigated from the imperial canal, if the owner fail to cultivate them for a certain time, are given to others who may solicit them. He finds it necessary to make the following interesting argument to justify such confiscation, concluding, however, with some critical observations prompted by his natural sense of justice, and with a statement of the general law on the subject:

> Laws of such a nature have their foundation in the relations between agriculture and ownership and

the public interest of the people. Land has not been given to man except for cultivation; agriculture is that which has produced territorial and permanent property; it is that which has created habitual occupation or control as a means of preserving property; and the works of agriculture are the only acts by which this habitual occupation can be induced. He who ceases, then, the cultivation of his land makes elusory the purpose of the fundamental law which erected property in right (derecho); it can not be said that he occupies or possesses actually or habitually, and, consequently, there is no reason to preserve his property. On the other hand, as the cultivation of the land is the principal basis of the prosperity of the people, every nation is interested in increasing it, and has, therefore, the right to punish him who neglects or abandons it, taking away from him a property which in his hands is sterile and placing it in other hands which are able to make it productive. If it has such right, it has also the duty, because it can not abstain from using all means which may be proper to increase the welfare of the mass and of the individuals who compose it. Is it not, perhaps, bound to give work and bread to the laborers and poor men who ask it? And, in order to comply with this principal obligation of every society, is there any means more natural than to take lands away from him who abandons their cultivation, and to give them to him who has none and desires to make use of them? But it is not always idleness which causes the abandonment of the cultivation of lands; unforeseen misfortunes fall at times upon the head of an owner, and, depriving him of his powers and his means, convert his fields into uncultivated lands. Far from depriving him, then, of his property, far from punishing one misfortune with another misfortune even greater, the necessary advances ought, on the contrary, to be made in a way which will not cause any hardship in order to carry forward his farming operations. It will, then, only when the cessation of cultivation is inexcusable, be just to consider it as a certain proof

> of the abandonment of the property. But these principles are not admitted by our general laws; and that which we find is that every owner preserves the ownership of his lands although he leaves them uncultivated for the space of many years.
>
> *1 Escriche, pp. 6–7–8, Edition of 1847.*

It will be seen, after all, that there is no substantial difference between the condition of the title to lands under the Spanish law and the condition of like titles under our system, although some of our law writers appear to consider that there is a difference. This seems to be the impression of one of our standard writers on the law of real property.

3 Washburn on Real Property, Chap. 2, Sec. 5.

Under our system of laws there can be no doubt that legal title to land once vested can only be divested legally.

3 Washburn on Real Property, Chap. 2, Sec. 1.
Robie v. *Sedgwick, 35 Barb. 329.*
Pickett v. *Dowdall, 1 Wash. (Va.) 115.*

It is quite clear from the quotations made from Dr. Escriche that, under the Spanish law, title to land once vested would never be lost by mere lack of possession or by failure to occupy, but, precisely as under our system of laws, the title might be lost, the right to the use of the land might be lost, by abandonment followed by possession by another person. There is no difference, and in the very nature of things there ought not to be any between the rights of ownership under one or another system, except in accordance with some local and special laws, such as prevail in Languedoc and Aragon. An interesting and striking case is to be found in the Missouri Reports as to what would constitute abandonment of land, although the learned court appears, from the language used, to entertain the erroneous idea that mere abandonment under the Spanish law would cause a loss of title.

Page v. *Scheibel, 11 Mo. 183–4.*

It is to be noted, however, that this case, and others in the same court, were contests between individuals as to the right to possession of land, and consequently involved the question of the acquisition of rights by adverse possession against the owners whose abandonment was alleged.

Fine v. *St. Louis Schools, 30 Mo. 176.*
Clark v. *Hammerle, 36 Mo. 639.*
Landes v. *Perkins, 12 Mo. 256.*
Salle v. *Prim, 3 Mo. 550.*
Barada v. *Blumenthal, 20 Mo. 162.*

The following quotations from the Partidas may be of some value:

> When a man has once acquired possession of a thing, he is presumed to be always in possession, whether he holds it corporeally or otherwise, until he abandons it with intention no longer to retain it: for though he can not all his life, hold it corporeally yet he may retain it in his mind. And not only may such possession be held by him in person but by his attorney, labourer, friend, guest, son or slave, or any of them who holds and uses the thing, in his name.
>
> *1 Moreau & Carleton's Partidas, 400.*

> If a man be dissatisfied with his immoveable estate and abandon it, immediately he departs from it corporeally, with an intention, it shall no longer be his; it will become the property of him who first enters therein. But if he does not leave it, though he were to declare that he did not wish any longer to retain it, yet as long as he remains there no person can enter; and if anyone were to enter, he would not acquire the property thereof until the owner had personally departed from it, and ceased to have possession of it. We likewise say, that if anyone abandon his estate and does not enter upon it, through fear of enemies or robbers; no one else can take possession of it; and if he does he can not acquire the property thereof. For although the owner had not the corporeal possession of his estate, he had nevertheless retained the

property of it, in his mind, and therefore no other person ought or can enter upon it.

1 Moreau & Carleton, 365.

The constructive possession of land, not actually occupied, follows the legal title; that is, in contemplation of law, every man is in possession of the land he owns, until ousted by an intruder, and abandonment of title is not to be presumed from non-entry, nor from neglect to pay taxes. The law does not limit a man's title to the *possessio pedis*. He may own lands he never saw, and an entry once in every cycle of one-and-twenty years is not necessary to preserve his title, because, in the eye of the law, he is in possession all the time. Inchoate rights may be abandoned, but abandonment is scarcely predicable of perfect titles.

Philadelphia v. *Riddle, 25 Pa. St. 263.*

This court, in a recent case, after quoting from section 13 of the act creating the court of private land claims, the language referring to titles not complete and perfect at the date of the acquisition of the property by the United States, but which—

"the claimant would have had a lawful right to make perfect had the territory not been acquired by the United States,"

goes on to say:

"This would preclude the idea that possession since the date of the treaty, however exclusive and notorious, could be regarded as an element going to make up a perfect title."

Crespin v. *United States, 168 U. S. 218.*
Jones v. *Montes, 15 Tex. 353–4.*

With equal force and reason can it be said that the fact of non-possession or lack of actual occupation for any part, or even all, of the time since the date of the treaty, is precluded from consideration, especially in such a case as the

present one, which is brought under section 8 of the act of Congress, which by its terms limits us to the question of whether or not the title "was complete and perfect at the date when the United States acquired sovereignty." The court is to decide what was the condition of the title either in September, 1846, when General Kearney erected a government in New Mexico, or in February, 1848, when the treaty of Guadalupe Hidalgo was made. Nothing which has happened since can be of the slightest consequence.

FIFTH.

Evidence of Reputation of Ancient Ownership and Possession of Land, as Shown by Statements of Aged Persons now Deceased is Competent.

It is apparent from the mere statement of this proposition, that it must be correct from the obvious impossibility in many cases, of obtaining any better evidence. An interesting discussion of the reasons for admitting hearsay evidence in such cases is to be found in a Maryland case.

Casey's Lessee v. *Inloes, 1 Gill, 492–3.*

For the general proposition, we cite the following cases :

Boardman v. *Lessees, 6 Pet. 341.*
Shulte v. *Thompson, 15 Wall. 162–3.*
Sanscrainte v. *Torongo, 87 Mich. 69.*
Wooster v. *Butler, 13 Conn. 313–4, 315–6.*
Scott's Lessee v. *Ollabaugh, 3 H. & McH. 511.*
Sparrow v. *Hovey, 44 Mich. 64.*

In Pennsylvania declarations of deceased persons as to particular facts within their personal knowledge, have been frequently received in such cases.

McCausland v. *Fleming, 63 Pa. St. 38.*

But this court, except in Pennsylvania cases, refuses to go so far, as will be apparent from the following:

> We will not undertake to review the vast number of decisions of State courts upon this subject. It would greatly protract this opinion. Some things may be deduced from them, which, though not universally recognized, are the conclusions to which, we think, a great majority of them lead. In questions of private boundary, declarations of particular facts, as distinguished from reputation, made by deceased persons, are not admissible unless they were made by persons shown to have had knowledge of that whereof they spoke, or persons on the land, or in possession of it when the declarations were made.
>
> *Hunnicutt* v. *Peyton, 102 U. S. 364.*

Oral evidence, adduced by plaintiff in the present case, as to the ancient ownership and possession of the Leybas, falls within the rule indicated by the court, as will be apparent by reference to the evidence of Campos at pages 72–3–4 of the Record, and of Willison at pages 87–8; and the evidence of Sedillo, which the court refused to hear,—page 104,—should have been received. He would have testified that the deceased Manuel Bustamente, twenty-four years before the trial, made statements tending to show the reputation of ownership by the Leybas of the land in question. It appears from the evidence of Campos, at page 73, that Manuel Bustamente was the oldest of the half-dozen old men from whom he learned about the grant when he was young, and he also says, at page 74, that Jesus Narvais, who swears that he was born in 1819,—page 142,—was younger than others of his family whom the witness mentions among his sources of information. It may not be improper to call attention to the fact that more evidence of the same kind was offered to this court last year, as will appear by reference to the affidavit of Felipe Pino, but rejected upon the ground, we assume, that it was merely cumulative.

If more definite and direct evidence can not now be produced, it should be remembered that it is due to defendant, which, through its Congress, failed to provide any satisfactory or authoritative tribunal for the trial of such cases until nearly forty-four years after the treaty of Guadalupe Hidalgo. The court of private land claims was organized in December, 1891, but transacted no business until some months later.

We respectfully submit that the appellant is entitled to a confirmation of the grant made to Joseph de Leyba in 1728.

H. S. CLANCY,

F. W. CLANCY,

Counsel for Appellant.

Supreme Court of the United States.

OCTOBER TERM, 1902.

MARIANO F. SENA,
APPELLANT,
v.
UNITED STATES OF AMERICA.
No. 40.

ADDITIONAL BRIEF FOR APPELLANT.

Since the preparation of the original brief for appellant, the condition of the record has been so materially altered that it seems advisable to make a short addition to the presentation of appellant's case, while the brief for the United States calls for something in the way of reply.

There have been added, by the appellees, to the record, under stipulation between the parties, certain documentary evidence which is described at page 9 of the brief for the government, and was filed here as an "Addition to Record" on December 1, 1902. The most important part of this evidence is the will of Salvador Leyba, of March 12, 1836, in which he declares who had been his wife, and who were his four children and heirs. In these particulars the will corroborates the oral evidence given

on behalf of plaintiff at the trial in the court below. This will also enumerates the property of the testator, and specifically declares that it sets forth that which he considers as his property. This was clearly the reason for putting it in evidence, as it fails to make any mention of the grant here in question. It will be remembered that this testator was the only son of the only son of the original grantee, and if he did not own the property in 1836, nothing descended to his grandchildren, from two of whom the plaintiff purchased.

There has also been added to the record by appellant, under like stipulation, a deed from the maker of the will above mentioned, to his son Juan Angel Leyba, dated August 9, 1834, conveying the rancho of the Coyote Spring, together with the grant in which the rancho was situated, which was given to the grantor's grandfather by the King of Spain on the 25th day of May, 1728. This was filed in this Court, as a further addition to record, on December 15, 1902. In this deed the boundaries of the grant are given as follows:

> On the north by lands of the Captain Sebastian de Vargas;
> on the east by the road which goes from the city of Santa Fé to the spring of San Marcos;
> on the west by lands of the old Pueblo of the Cienega;
> on the south the cuesta (slope) called the arroyo of Oregano.

It will be seen that these are substantially the same boundaries as are given in the grant of 1728, and in the will of 1783, which are set out on page 9 of appellant's original brief. This fully meets the intended effect of the

will of 1836. No question is made as to the authenticity of this documentary evidence on either side. The deed to Juan Angel Leyba was not found until after the will of his father had been discovered by the representatives of the government, and it was then found in the old Spanish and Mexican archives preserved at Santa Fé in a disorderly and confused condition.

In appellant's original brief at pages 23–4, we gave a summary of plaintiff's case as it then stood. With the changed condition of the record, the appellant's case is so strengthened that we here reproduce that summary with interpolations and additions justified by the new matter in the record:

Plaintiff has a grant made in 1728;
he has possession delivered to the grantee in 1728;
he has the presumption that that possession continues, which presumption must prevail unless overcome by evidence;
he has the fact that such possession actually continued until 1783, when Simon, the son of the grantee, was dying on the land, at the Coyote Spring, as is distinctly declared by Simon's will;
he has the presumption that the possession existing in 1783 continued, which presumption must prevail unless overcome by evidence;
he has the fact that such possession did continue until 1834, when Salvador Antonio, declared by the will of Simon to be his only son, conveyed the grant to his son, Juan Angel Leyba;
he has the presumption that possession by Juan Angel accompanied his ownership, and that it continued, which presumption must prevail unless overcome by evidence;

he has the facts that Juan Angel was thereafter in possession at a date not fixed, but between 1839 and 1846, and that he was killed by Indians not far away from the Coyote Spring;

he has a deed from the only child, a son, of Juan Angel Leyba, who was a mere infant when his father was killed;

he has established the location and boundaries of the land;

he has the fact of ruins of houses at the Coyote Spring at the place where Simon made his will in 1783 and where Juan Angel lived up to the time of his death after 1839.

As shown in appellant's original brief, at pages 11 to 13, if anything has occurred to divest this Leyba title, the burden of proof is on the government to show it; and to this end the government has produced only the negative evidence of witnesses who merely say that they have not heard or known of the grant or of the Leybas. The strength of this is at once apparent by reference to the celebrated pig-stealing case where the defendant was triumphantly acquitted upon the evidence of ten witnesses who had not seen him steal the pig while there were but two who had seen the offense committed. And the court is urged by counsel for the government, upon such a showing, to hold that the clearly proved possession and assertion of ownership continued for more than 110 years, are not sufficient to justify a confirmation of the claim.

It is to be observed that one effect of these additions to the record has been to force counsel for the government to abandon the theory upon which they tried the case in

the court below. At that time they proceeded with the belief that the plaintiff and his witnesses had manufactured a family and genealogy of the Leybas to fit the grant, and were sturdy and wilful liars, and that the grant was of a small piece of land close to the city of Santa Fé—a most fantastic idea, creditable only to the imagination of its author. Both of these conceptions are destroyed by the later-discovered documents. The will of Simon de Leyba, of 1783, the will of Salvador Antonio Leyba, of 1836, the deed of his children, twelve days later, to José A. Romero, the will of Maria Josefa Leyba, of 1860, the deed of Ramirez and wife, of 1864, in every detail corroborate the oral evidence on the trial as to the Leyba pedigree, and is convincing that the witnesses were striving to tell nothing but the truth. And yet counsel for the government cannot refrain from attacking plaintiff and his witnesses (*Brief, pp.* 30–1, 47) upon grounds which are no longer tenable.

The will of 1783 and the deed of 1834 utterly destroy the fiction as to the location of the grant near the city of Santa Fé, showing as they do, that the grant includes the Coyote Spring and buildings near it. They also corroborate the evidence of Willison and Campos as to the existence of the ruins at that place, and discredit the government witnesses who said there were no such ruins.

REPLY BRIEF FOR APPELLANT.

I.

There is no limitation as to the quantity of land granted.

The learned counsel for the government in their brief appear to attach great importance to a part of the original petition of Jose de Leyba, made in 1728, which they claim must limit the grant to a little over four acres. The language referred to, in the Spanish, is as follows:—

> registro un pedaso de tierras y monte, yermo y despoblado, que cabe media fanega de mais de sembradura, poco mas ó menos.

Neither the translation in the record (p. 112) nor the one set out in the brief for the government (p. 5) is correct, as we will here show to the court. That we have not heretofore given attention to this point, is because we had not considered it of any consequence. Correctly translated, the language quoted is as follows:

> I record a piece of lands and woods uncultivated and unsettled which includes a half a fanega of corn-planting land, a little more or less.

The government translation is

> I register a piece of lands and woods uncultivated and unsettled that will contain half a fanega de *maiz de sembradura*, a little more or less.

It will be noted that the essential difference is as to the meaning in English of the two words "*que cabe*," or rather of the one word "*cabe*." *Cabe* is the third person singu-

lar of the present tense in the indicative mood of the verb *caber*.

The latest and best Spanish-English dictionary, that of Velasquez de la Cadena, published in 1900, gives as the English equivalent of *Caber*, used as an active verb, "To contain, to comprise, to include."

If it is here used as an active verb, clearly the context, which refers to lands and woods, and gives boundaries of the piece of land undoubtedly far beyond any four-acre tract, requires us so to translate the word as to have it indicate merely that somewhere within the "piece of lands and woods" asked for there is to be found "a half a fanega of corn-planting land, more or less."

Reference to standard Spanish dictionaries will corroborate this view, and makes it even stronger. The Diccionario de la Academia Española, of 1899, defines the word "Poder contenerse una cosa dentro de otra. *Contineri*"; or, in as literal English as possible, "To be able to be contained one thing within another," or "inside of another."

The same definition is to be found in different editions of the dictionary of the Academy, in the Diccionario Enciclopedico of 1900, and presumably in any other standard Spanish dictionary.

The assumption that this word indicates any intention on the part of Leyba to ask for only a half a fanega of land, is utterly without any foundation whatever.

Moreover, the will of Simon de Leyba in 1783, and the deed of Salvador Antonio to Juan Angel Leyba, in 1834, show the consistent assertion for more than a century of claim under this grant to all the land within the boundaries given, and the ignoring of any limitation to a half a fanega of land.

No one ever dreamed of such alimitation until now,

when the government has been, by the will of Simon, of 1783, and the deed of 1834 to Juan Angel, forced entirely to abandon the theory of the defence made in the court below.

The will of 1783 indicates the existence at the Coyote Spring of such buildings, corrals, farming tools, &c., as to show that there was probably much more than four acres of land under cultivation at that time. This was undoubtedly the Pueblito de los Leybas mentioned in the evidence. (Record, pp. 14 and 99.)

It is asserted, however, that "Quantity was of the essence of the entire grant, else the alcalde would have named the outboundaries in the act of possession." (Brief for U. S., p. 34.) No reason is assigned for this assertion. It was not uncommon for the act of possession not to set out boundaries. In this case the alcalde gave "the possession prayed for by José de Leyba in his petition," and before doing so, "inspected the land and woods prayed for by the said petitioner." The alcalde adopted what was set out in the petition.

II.

This title was complete and perfect at the date when the United States acquired sovereignty over New Mexico.

This proposition has been sufficiently discussed in appellant's original brief, and we desire here to add only that the grounds upon which the argument rests have been increased and strengthened by the more recently-filed documentary evidence.

It is a matter of surprise that counsel for the government have the courage to declare, as they do at page 43

of their Brief, in effect, that the law of presumptions has no application to the question of confirmation under the ordinance of 1754, when we recall that in a recent case this court held two titles to be perfect solely upon the presumptions arising from possession of land from 1785 to the date when the United States acquired sovereignty.

U. S. v. *Chaves*, 175 *U. S.*, 520, 524..

"The express determination by the court below on the value and weight of the testimony presented to establish possession," (*Brief for U. S., p.* 44), has no application whatever to the record as it now stands, and it is impossible that that court would have held as it did on this point, if the case had been presented as it now is.

III.

There is no ground for the suggestion of laches.

Upon this point, probably appellant might safely stand on what is set out under the fourth head of his original brief, where it is shown that a complete legal title, once vested, cannot be lost by mere failure to occupy, whether under Spanish or English law; but, even if we go beyond this safe rule, the facts disclosed by the record do not justify the attack made by counsel for the United States under the third point of their Brief, at pages 45 to 51. Repeated references, on pages 46, 48, 50, 55, 57, are made to "the descendants of Leyba, if any there were," and to "the Leybas," as though there were many of them who ought to have been asserting their rights before the surveyor general and in the land court at an earlier day.

The record shows that there was but one Leyba in existence who owned this property at the time of the Ameri-

can occupation, and he was then four or five years old. It is also shown that he was called a *mujerote* (Record, p. 83,) of whom as much ought not to be expected as of most men. This word is a local provincialism, not to be found in dictionaries, the nearest approach to it being *mujeriego*, and is used rather as a term of reproach and derision, meaning a womanish, effeminate man, lacking in the vigorous qualities, mentally or physically, or both, which ordinarily characterize complete manhood. Moreover, he may have been long ignorant of his ownership, and when he did learn of it, had no desire, perhaps no means, to assert his claims. The act of 1854 which created the office of surveyor general, imposed no duty or requirement of any kind whatever upon grant claimants, but merely declared the duty of the surveyor general in such matters. Failure to present a claim to him, was no neglect of duty, and there was nothing in the administration of that system for settling land titles, to attract or encourage claimants to invoke the jurisdiction. Nearly all the claims confirmed by Congress were so confirmed by two acts, one in 1858 and the other in 1860. Thereafter, one was confirmed in 1861, one in 1866, seven in 1869, one in 1879, and no more. Long before 1879 it was generally known in New Mexico that there was no reason to hope for any more confirmations by Congress, and that it was a waste of time and money to go before the surveyor general with such claims.

As to the land court, that tribunal was organized in December, 1891. Within less than four years thereafter, the owner sold and conveyed to the plaintiff, who promptly gave notice of his claims to the company for whose benefit this defence appears to be conducted, by bringing suit in the district court of Santa Fé county, which was dismissed in 1899, when the present case was begun. The

reasons for that dismissal do not appear in the record, but it cannot be considered improper if we say that they were in no way discreditable to plaintiff.

IV.

There is no evidence of abandonment.

The authorities are that to justify a finding that an owner has abandoned his property, under the Spanish law, the evidence must be clear, definite, and convincing, both of the fact of non-occupancy and of the intent of the owner. This is sufficiently discussed in our original brief. There is no such evidence in the record, and yet counsel for the government assert, with apparent confidence, that "the facts disclosed by this record clearly show abandonment" about 1837 (*Brief, p.* 57). In 1834 Salvador Antonio Leyba was in possession, and conveyed to his son, Juan Angel. Juan Angel Leyba was living on the property after 1839, and was killed near it before 1846, leaving one child, who was born in 1839. It is not quite clear whether the learned counsel for the government impute the essential intent to abandon, to Juan Angel, who was suddenly killed, or to his infant son.

Possession or non-possession since 1848, as shown in our former brief, cannot properly be regarded as an element going to make up, or defeat, a claim to a perfect title.

Crespin v. *U. S.*, 168 *U. S.* 218.

V.

The boundaries are sufficiently established for purposes of confirmation.

The converse of this proposition is asserted on the other side. Counsel declare with evident sincerity that the only boundary proved "with any suggestion of certainty" is the eastern,—the San Marcos road. We are grateful for that concession. In discussing the northern boundary,—the lands of the Captain Sebastian de Vargas, as given in the grant of 1728 and the deed of 1834,—counsel ignore the will of 1783, which shows the boundary to be "the road which goes towards Pecos from the Cerrillos, or lands of the Captain Sebastian de Vargas." That road is well known, and is plainly marked on maps in the record. The suggestion is made that, because the Sebastian de Vargas grant as confirmed by the land court is not north of the tract here claimed, therefore we are precluded from urging in this case that, as a matter of fact, it is our northern boundary. We were not parties to the case of Purdy *v.* United States, and are in no way bound by the result thereof; but we call attention to the fact that the opinion in that case (*Record*, *p.* 126) shows that the original grant papers had been lost, and that the southern boundary of what was confirmed was established by proof of the grant to Lorenzo Marquez which gave the de Vargas land as its north boundary. The opinion says that no such evidence was presented as to the western portion of the claimed de Vargas grant (*Record*, *p.* 129), and the conviction is irresistible that if the court had had the documentary evidence now included in the present record, the confirmation would have extended to the

western portion. There is no shadow of doubt as to the location of our northern boundary.

The western boundary is, in the grant papers, the lands of Juan Garcia de las Rivas, but in the will of 1783 and in the deed of 1834, it is the lands of the old Pueblo of the Cienega. It is shown by documentary evidence (*Appellant's original Brief, p.* 10) that, in 1701, the lands of the old Pueblo of the Cienega were the property of Miguel Garzia de la Riba who was the father of Juan Garcia de las Rivas. But our learned adversaries declare "that there is absolutely nothing to show what is the east boundary of the sitio or tract called in 1701 the old Pueblo of La Cienega." (*Brief, p.* 60.) This is not quite correct, although it is the fact that the lands of Cienega or the old Pueblo of Cienega, are so well-known in that part of the country that their location was rather taken for granted at the time of the trial (Record, pp. 25, 28, 31, 44, 45, 52, 62), and there is not much evidence on the subject, but there is enough to show that an intelligent surveyor would have no difficulty in fixing their location. (*Record, pp.* 139, 141–2, 86, 90.) Certainly this is all that is needed in this case. Mr. Willison, engineer and surveyor, testifies that he knows where the old Pueblo de la Cienega is (*Record, p.* 86); that he had documentary evidence in regard to how far east the Cienega lands extended (*Record, p.* 88), and had seen numerous deeds of lands out there in private hands (*Record, p.* 96). The information is readily accessible for the making of a survey. The evidence here is ample for a decree giving the lands of the old Pueblo de la Cienega as the western boundary.

We now come to the southern boundary,—the cuesta (slope) called the Arroyo del Oregano. As stated in our original brief at page 5, this is not so clearly and definitely

located as are the other boundaries, but it is certain that it is between the Coyote Spring and the San Marcos Spring, which latter is about two miles south of the former. The will of Simon de Leyba, of 1783, made at the Coyote Spring, declares that the ranch at the Coyote Spring is in the grant, and the conveyance of the grant from Salvador Antonio Leyba to his son, Juan Angel Leyba, in 1834, distinctly includes the rancho of the Coyote Spring. These documents make it clear that the cuesta is south of the Coyote Spring. Without further proof, this would be sufficient to justify a decree fixing the cuesta by name as the southern boundary with the qualification that it must be south of the Coyote Spring. But the witness Willison (Record, pages 87 and 88), upon information derived from an old man, now dead, clearly locates the cuesta and Arroyo, and shows the certainty of any intelligent surveyor being able in the field to find these natural objects. Another witness, Campos, locates the cuesta differently from Willison (Record, pp. 80, 82), and counsel for the government magnify the importance of this difference. Without a topographical survey, it is impossible to say whether Willison or Campos is right, or whether both may not be. They may be referring to the same natural objects at different points in their course. Willison says the Coyote Spring is in the Arroyo del Oregano. (Record, p. 87.)

In connection with this boundary it is to be noted that counsel for the government, at pages 21–22 of their brief, attempt to make a point against us because the title papers of the San Marcos grant in 1754 contain no reference to the Leyba grant, and assert that the San Marcos grant is "claimed to be coterminous with this grant." They do not say by whom it is so claimed, but certainly the plaintiff has never made such claim. The only refer-

ence to anything approaching such a statement is in the remarks of counsel at page 104 of the Record, as to what a witness would testify, if permitted, and what is there said falls short of any claim that the grants adjoin.

VI.

Plaintiff was prejudiced by the action of the court below as to the depositions.

These depositions and the ruling thereon, are discussed at pages 13 to 15 of our original brief. No addition to what is there said seems necessary, especially as counsel for the government, at page 63 of their Brief, appear to concede its force, and attempt to meet it by declaring that "while declining to compel the government to call these witnesses for cross-examination, the court clearly notified counsel that if the witnesses were in attendance, he might call them himself for cross-examination."

We certainly did not, at the time, understand the court to give any such notice, nor can we now find such notice in the record. We believed ourselves to be placed in such a position that we could not call these persons without making them our own witnesses, which we were not willing to do, having no confidence in their honesty. We submit that the record does not bear out the assertion that the court told us we could call the witnesses for cross-examination. All that appears on this subject is to be found on pages 24–5, 36, and 134–5 of the Record, and we invite attention thereto. It is to be noted that the word "able," in the second line of page 25, should read "unable."

We again respectfully submit to the court that the appellant is entitled to a confirmation of his claim, notwithstanding what is set up on behalf of the United States.

H. S. CLANCY,
F. W. CLANCY,
Counsel for Appellant.

FILE COPY.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1902.

No. 40.

MARIANO F. SENA, APPELLANT,

vs.

THE UNITED STATES.

Petition for Modification of Judgment and for Rehearing.

To the Honorables, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, the appellant in the above entitled cause, respectfully calls the attention of the court to the fact that the judgment of affirmance, as entered in said cause, does not exactly express what the opinion of the court clearly intends, and, unless amended, may seriously prejudice the rights of your petitioner.

Your petitioner shows that the said judgment affirms the decree of the court of private land claims without qualification or restriction; that the decree thus affirmed, which appears at pages 239-40 of the printed Record, contains a finding that the title asserted by your petitioner to the land alleged to have been granted to Jose de Leyba on the 25th day of May, 1728, "is of no validity," but this court, in its opinion, is so far from adopting this finding of the court below, that it declines to express "an opinion as to whether this was a perfect or imperfect grant within the meaning of the law," and affirms the judgment upon another ground.

Your petitioner further shows that he is advised that, notwithstanding what is said in the opinion of this court, it may be held elsewhere, and will undoubtedly be contended, that the judgment of affirmance in its present shape, is an affirmance of the finding that the title alleged is of no validity.

Your petitioner further shows that this application has not been sooner made only because neither he nor either of his counsel was advised of the form in which said judgment of affirmance had been entered until late in the afternoon of Saturday, May 23, 1903, when the counsel who prepares this petition was informed, at Albuquerque, New Mexico, by telegram from Washington, that the judgment simply affirms the judgment of the court below without qualification, although he had, as early as April 24, 1903, by letter, which must have gone astray, attempted to get information on this point.

Your petitioner, therefore, prays that the judgment of this court be so amended as to declare that, in accordance with the opinion of this court and for the reason therein set forth, the judgment or decree of the court of private land claims is affirmed so far as it decreed that the petition be dismissed; and that the mandate heretofore issued from this court be recalled and made to conform to the amended judgment.

Your petitioner prays also that a rehearing be ordered in this cause, for the reason that the court, in its opinion, holds that the right, under the act of Congress creating the court of private land claims, to prosecute a claim to land based upon a perfect Spanish title, may be lost by laches, which holding violates the well-established rule of both the civil and the common law, that a complete legal title can never be divested by the owner's failure to assert his rights, and ignores the consideration that there is no one who can have any standing or right to complain of the laches, because the government cannot have suffered any loss thereby, and because Congress has, by section 14 of said act, provided for the protection of any individual who might otherwise suffer from such laches, it being improper for the judiciary to add to the legislation of Congress on this subject.

F. W. CLANCY,
Of Counsel for Appellant.

No. 235. 40

Brief of Atty. Gen'l (Richards, Pope & Bonsall) for U.S. on mo

Filed Jan. 6, 1902.

Office Supreme Court U.S.
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JAMES H. McKENNEY

In the Supreme Court of the United States.

OCTOBER TERM, 1901.

MARIANO F. SENA, APPELLANT,
v.
THE UNITED STATES ET AL. } No. 235.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

BRIEF IN OPPOSITION TO APPELLANT'S MOTION TO TAKE ADDITIONAL TESTIMONY.

In the Supreme Court of the United States.

OCTOBER TERM, 1901.

MARIANO F. SENA, APPELLANT,
v.
THE UNITED STATES ET AL. } No. 235.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

BRIEF IN OPPOSITION TO APPELLANT'S MOTION TO TAKE ADDITIONAL TESTIMONY.

The motion of appellant to take additional testimony in this cause is based upon the provision of the ninth section of the act creating the Court of Private Land Claims, which is quoted on page 11 of appellant's motion.

This provision was considered by this court in the *United States* v. *Coe* (155 U. S., 79, 83), where the court after holding that in equity causes and independent of statute it is within the power of the court to allow the taking of additional testimony on appeal, says:

> Nevertheless, orders allowing this to be done are not granted as a matter of course, but are made with extreme caution, and only on satisfactory grounds.

The motion of the claimant is directed to two ends: *First*, the admission of the will of Simon de Leyba

recently found in the archives at Santa Fe and a translation of which appears as a part of claimant's motion; and, *second*, the admission of the oral testimony of Inez Apodaca and Felipe Pino, affidavits in respect to whose testimony appears in the record, and "possibly of other witnesses" (p. 14).

So far as the will is concerned, it is admitted for the purposes of this motion that said document appears among the files known as "the old Spanish archives" in the custody of the Territorial librarian at Santa Fe. As such it is presumptively genuine, and under the holdings of this court in some of the California cases is a document which this court may consider on this appeal, whether formally tendered in the court below or not. There is, therefore, no objection on the part of the Government to the consideration of this document as a part of the record in the cause. The correctness of the translation tendered, as well as the relevancy, force, and effect of the instrument itself, are matters more properly for discussion on the hearing of the merits, when it is believed that it can be demonstrated to the court that the document is lacking in any controlling, or indeed serious, influence upon the result which should attend this appeal.

The application to take the further oral testimony of the two witnesses named and "possibly of other witnesses" is in effect a motion for a rehearing of the whole cause, since it is manifest that if claimants are to be allowed to bring in oral proof to supplement their original case the order allowing such application should

extend the Government the same privilege, resulting practically in a new record. The application is, therefore, putting it most favorably, to be tested by the rules governing motions for rehearings or for new trials, and when so tested it is not believed that this court, in the exercise of "extreme caution," will find the "satisfactory grounds" prescribed by the Coe case as justifying a retrial. The familiar rules governing the granting of new trials for newly discovered evidence require, among other things, (1) that the proposed testimony must be such as could not, by the exercise of due diligence, have been discovered before the trial. It is not believed that the proposed tender brings this case within the requirement of this rule. The parties to this cause must recover upon their claim, if at all, upon the theory that it was a perfect and complete title at the date of the treaty of 1848. It would seem that the holder of such a title would, after forty years ownership under the American Government, have been prepared in 1891, when the Court of Private Land Claims was established, to present his claim for adjudication; but in this case the grant was withheld from presentation to the court for eight years longer. It would at least seem that in 1899, when suit was finally filed, the parties at interest should have been prepared to present all the proofs available for its support. Still some months intervened to the trial, during which time claimants had the opportunity to secure the testimony deemed necessary, and finally, in 1900, the cause was tried and submitted. It is not

believed that there are any facts developed by the affidavits excusing his failure to secure this testimony during the ample time prior to the trial. (2) Upon the showing made in at least the affidavit as to the witness Inez Apodaca, it is not made reasonably to appear that were the case reopened the witness would testify as stated. The general rule, of course, is that the affidavit of the newly discovered witness must be presented, or when for satisfactory cause such affidavit can not be obtained, then an equivalent showing must be made. The affidavit of the proposed witness is not produced, neither is the affidavit of any person who has talked with the witness produced. All that is produced is an affidavit from the claimant Sena that another party had told him that the proposed witness would testity as outlined, which is hearsay twice over. (3) To justify a new trial the evidence must be such as will probably change the result. It requires but a reading of the affidavits of Sena and Pino to show that most, if not all, of what they *might* testify to if sworn is clearly inadmissible as evidence, both because it is hearsay and upon other obvious grounds. (4) The proposed testimony, viewing it as admissible and in its strongest light, is purely cumulative.

It is respectfully submitted, therefore, that the showing now made, when considered in connection with the unanimous opinion of the court below determining this cause, fails to justify a reopening for the admission of the testimony now tendered. If, however, further oral proof is to be received it is respectfully urged that

the order remanding the case for this purpose should afford the Government full opportunity to present testimony in rebuttal of what claimant may produce

Respectfully submitted.

JOHN K. RICHARDS,
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MATTHEW G. REYNOLDS,
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WILLIAM H. POPE,
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In the Supreme Court of the United States.

OCTOBER TERM, 1902.

MARIANO F. SENA, APPELLANT,
v.
UNITED STATES. } No. 40.

JOSE DE LEYBA GRANT.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This suit, which was instituted in the court below on September 29, 1899, was for the purpose of securing the confirmation of what is called the Jose de Leyba grant, alleged to contain about 18,000 acres of land, situate in the county of Santa Fe, Territory of New Mexico.

Subsequently, it having been ascertained by the representatives of the Government that there were a number of persons holding portions of the tract sued for, under claim of title adverse to the grant, a motion was filed by the United States praying an order of

court requiring that these adverse possessors and claimants be made parties defendant and served with process and copy of the petition, as required by section 6 of the land-court act.

Plaintiff confessed said motion to the extent of filing on December 19, 1899, an amended petition reiterating the allegations of the original petition, setting up as adverse possessors and claimants the parties named in the Government's motion and making them parties defendant. Two of these parties, the American Turquoise Company and J. P. McNulty, joined with the United States in defending against the cause, both upon the pleadings and at the trial. (R., 3–4.)

The material allegations of the petition, as amended, were as follows:

That plaintiff is the owner of that certian grant and tract of land lying and being situate in the county of Santa Fe, in the Territory of New Mexico, known and called by the name of the "Jose de Leyba grant," and bounded and described as follows: On the east by the San Marcos road; on the south by an arroyo called Cuesta del Oregano; on the west by the lands of Juan Garcia de las Rivas; and on the north by the lands of Capt. Sebastian de Vargas.

That said tract of land was granted to Jose de Leyba by the then king of Spain, by Governor and Captain-General Juan Domingo de Bustamante, on the 25th day of May, in the year of our Lord 1728, and the grant papers of the same are in the form of an absolute and perfect grant, the original papers of which said

grant are now on file in the office of the surveyor-general of the Territory of New Mexico, and are not in the power, possession, or control of petitioner, said original papers being identified as "Archive No. 441."

That said land has never been officially surveyed, and petitioner does not know the area thereof, but he has filed with his original petition herein a sketch map of the same, showing approximately, according to the best information which he can obtain, the shape of said land and its location, as far as possible, but the exact area and location and shape can not be ascertained until a survey thereof can be made.

That petitioner claims said land by conveyance from the heirs and assigns of the original grantee.

That since the filing of his original petition herein, he has been informed that the owners of Los Cerrillos grant, the same being a confirmed grant and numbered 78 on the docket of this court, J. P. McNulty, L. B. Prince, Thomas Whalen, Samuel Brimagen, Thomas Moore, jr., Diego Mares, Bernard Carrol, Oto Seigler, Albert Ceyer, M. J. O'Niel, Pedro Muniz, and the American Turquoise Company, claim adverse possession to the real estate included within the said Jose de Leyba grant otherwise than by the lease or permission of petitioner, and he therefore makes said parties and company parties defendant to this amended petition, and asks that proper process issue for service on them.

That said claim to said land has not been confirmed, nor has it been considered or acted upon by Congress or any other authorities constituted by law for the

adjustment of land titles in the limits of said Territory of New Mexico as acquired.

On April 6, 1900, the United States filed its answer (R., 8–9), putting generally in issue the allegations of the petition, specifically denying that the grant claimed was situate as set forth in plaintiff's petition, alleging that if any such grant was made the same was located in a manner very different from that set forth in the petition and accompanying sketch map, and covered no portion of the premises included in said petition and sketch map, and further pleading the statute of limitations on the ground that the claim as made was not a perfect and complete title at the date of the treaty, and not having been filed within two years from March 3, 1891, as provided by section 12 of the land court act, became and was abandoned and forever barred at the expiration of said two years. The separate answers of the defendants, McNulty and the American Turquoise Company, is found, Record, 4–5, and separate answer of certain other defendants is found, Record, 9–10.

The cause came on for hearing on April 30, 1900, and was finally submitted on May 4, 1900.

At the hearing claimant presented as his original muniment of title archive No. 441, from the office of the surveyor-general of New Mexico. The reception of this document was objected to on the general grounds of immateriality, irrelevancy, and incompetency, and on the special ground that it was not shown that any *testimonio* had ever been issued, nor was the existence of such *testimonio*, or the record thereof, or of the grant shown or accounted for.

This grant document, which is quite brief (R., 110–111), is translated by the Government as follows:

To the Governor and Captain-General:

I, Jose de Leyba, a citizen of the town of Santa Fe, appear before your excellency with that formality which may be legally proper and consistent with my rights, and state that in conformity with the royal ordinances of His Majesty I register a piece of lands and woods uncultivated and unsettled that will contain half a *fanega de maiz de sembradura*, a little more or less, which, on the east side, is bounded by the San Marcos road, and on the south by an arroyo which is called Cuesta del Oregano, and on the west by lands of Juan Garcia de las Rivas, and on the north by lands of Captain Sebastian de Vargas, and on account of all which I ask and pray with due humility that your excellency may be well pleased to make me grant, in the name of His Majesty, of said piece of land, for me and my children, heirs and successors, and that the royal possession be given me, that I shall thereby justly receive benefit and favor which I ask. And I formally swear that this my petition is not in bad faith, and whatever is necessary, etc.

(Signed) JOSEPH DE LEYBA. [RUBRIC.]

TOWN OF SANTA FE,
May 24, of the year 1728.

This petition was presented to the governor and captain-general of this kingdom by the party therein named, and having been examined by his excellency he treated it as presented, and in view of what this party asks for,

he would command, and did command, the chief alcalde of this town of Santa Fe to proceed to the place which the party mentions and to examine the land asked for, summoning those who live near, and in the name of His Majesty, who may God preserve, I make to him grant of what he asks for, it being without prejudice to any third party who may have a better right, provided that he settles it within the period fixed by royal ordinances. He shall put him in royal and personal possession of the said land, which possession he will enter in the proceedings at the end hereof. Thus his excellency decreed, commanded, and signed it before me, the present civil and military secretary. I certify.

(Signed) BUSTAMANTE. [RUBRIC.]

By command of the governor and captain-general:

(Signed) ANTONIO DE GRUCIAGA, [RUBRIC.]
Civil and Military Secretary.

At the town of Santa Fe, on the twenty-fifth day of the month of May, of the year one thousand seven hundred and twenty-eight, before me, Captain Diego Arias de Quiros, chief alcalde and war captain of said town, acting before me as special justice, with my undersigned attending witnesses, in compliance with the above order, issued by the governor and captain-general, Don Juan Domingo de Bustamante, I proceeded to give the possession which Joseph de Leyba asks for in his petition. I arrived at the spot and place for which the applicant asks, taking in my company Jose

Manuel Chirinos and Captain Sebastian de Vargas; and having examined the lands and woods which the said applicant asks for, I took him by the hand, in the presence of the said parties, performing the customary ceremonies, pulling up grass, throwing stones, and shouting as evidence that it was his. I gave him the royal possession in the name of his Majesty (God preserve him), in order that in his name and by his royal word the aforesaid party, his children, and heirs may enjoy it.

And in witness thereof I signed it as special justice with my undersigned attending witnesses, for lack of a public or royal notary, of which there is none in this kingdom; and it is on common paper on account of none of any kind being in use in these regions. I certify.

(Signed) DIEGO ARIAS DE QUIROS. [RUBRIC.]

Attest:

(Signed) JUAN MANUEL CHIRINOS. [RUBRIC.]

(Signed) JUAN JOSEPH LOBATO. [RUBRIC.]

Plaintiff also tendered in evidence archive 732 (R., 113–115), under admission of its genuineness, but under the objection that it was immaterial and irrelevant. An extract from page 8 in the book of the cabildo (a part of the archives of the surveyor-general of New Mexico) was likewise tendered (R., 115–116). The apparent purpose of the introduction of these two papers was to throw light upon the location of "the lands of Juan Garcia de las Rivas" mentioned as the west boundary call of the grant. Thus, archive 732 is a deed dated in 1701 from Joseph Castellanos to Miguel Garcia de las Rivas of a tract of land called

the Sitio de la Cienega held under grant from the Crown; and the extract introduced from the book of cabildo is dated November 26, 1713, and contains a recital that the father of Juan Garcia de las Rivas was Miguel Garcia de las Rivas. The only relevancy claimed for these instruments on the trial was that they established that as Miguel Garcia de las Rivas owned the tract of La Cienega in 1701, and as Juan Garcia de las Rivas was named as his son in 1713, therefore, the lands of Juan Garcia de las Rivas mentioned in the grant of 1728 was the above-mentioned tract of La Cienega.

The three documents just described constituted all the evidence introduced in chief by claimant on the subject of his grant, or the boundaries thereof, the remainder of his evidence in chief being directed solely to his deraignment of title.

Since this cause was appealed and docketed in this court, and since the record was printed, some important documents have been discovered and stipulated as part of the record in this court which throw much light upon the claim and simplify the facts of the case very much.

The documents which have been stipulated into the record are as follows:

The last will and testament of Simeon de Leyba, the son of the original grantee, Jose de Leyba. A copy and translation is found at pages 249 and 250 of the printed record, and was presented on behalf of the claimant Sena.

The following, presented by the United States, and contained in the "Addition Record," as follows:

First. A certified copy of the last will and testament of Salvador Leyba, dated March 12, 1836, taken from book "F" of the record of deeds in the office of the probate clerk and ex officio recorder for Santa Fe County, N. Mex., which appears to have been filed in said office for record on September 8, 1872.

Second. A certified copy of a deed by Juan Angel Leyba, for himself and on behalf of his sisters, Juana and Josefa Leyba, and Rafael Gutierrez, heirs of the deceased Salvador Leyba, dated March 24, 1836, to Jose Antonio Romero, conveying a piece of agricultural land 86 varas wide and 254 varas long; consideration, $43. Said sale is recited to have been made to pay the funeral and burial expenses of their deceased father.

Filed for record October 1, 1890, and recorded October 2, 1890, in book "V," pages 280 and 281, record of deeds of Santa Fe County, N. Mex.

Third. A certified copy of the last will and testament of Maria Josefa Leyba, dated June 19, 1860, taken from the files of the office of the probate clerk and ex officio recorder of Santa Fe County, and bearing indorsement, "Will of Josefa Leyba, ——, 197," and the approval and appointment of Serafin Ramirez as administrator, dated March 11, 1861.

Fourth. A certified copy of an *hijuela* from Jose Serafin Ramirez, administrator of the estate of Maria Josefa Leyba, deceased, designating the property which his wife, Maria Antonia Leyba, had inherited from her mother, Maria Josefa Leyba, deceased.

Indorsed on the said *hijuela* is a deed dated October 1, 1864, from Serafin Ramirez and Maria Antonia Leyba, his wife, to Jose Aguilar and Maria Apolonia Leyba to a portion of the property mentioned in said *hijuela.*

Indorsed also is a conveyance dated October 2, 1864, and acknowledged before Maximo Martinez, justice of the peace, on December 23, 1868, and filed for record on the 28th day of December, 1868, and recorded in book "E," at pages 40 and 41 of the record of deeds of Santa Fe County, N. Mex.

Recently appellant has discovered a deed from Salvador Antonio Leyba to his son, Juan Angel Leyba, dated August 9, 1834, to the rancho of the Coyote Spring with its houses and corrals, together with the grant in which the said ranch is situated, which was given to my grandfather by the King of Spain, the twenty-fifth day of May, one thousand seven hundred and twenty-eight.

And its boundaries are as follows, to wit: On the north by the lands of Capt. Sebastian de Vargas; on the east by the road which goes from the said city of Santa Fe to the spring of San Marcos; and on the west by the lands of the old pueblo of the Cienega; and on the south the hill (Cuesta) called the arroyo of the Oregano.

Which said conveyance will be found under "Further stipulation and addition to record" filed January 22, 1901.

These instruments are specifically referred to at this

time in order to avoid examining a large amount of oral testimony upon the pedigree of the grantors of Sena, which is now admitted.

The circumstances out of which grew Sena's activity and final acquisition of a supposed interest in this claim, so late as 1895, are to be found in the discovery and opening of very valuable turquoise mines in south Santa Fe County, and the accidental discovery of the grant papers while searching the Spanish and Mexican archives in the office of the surveyor-general for the Territory of New Mexico, in quest of evidence relative to what is known as the Sebastian de Vargas land grant, which was pending before the Court of Private Land Claims in the name of Louisa J. Purdy and others, they being represented by Mr. James H. Purdy, Mr. James W. Vroom, attorneys, and assisted by Mr. R. B. Wilson.

It appears from the testimony of Willison (R., 91 and 92) that he claims to have discovered this original grant to Jose Leyba, dated in 1728, while examining the archives in the De Vargas case, and that he made two or three trips down there and located the boundaries and made several plats, a copy of which was filed with the papers in this case. The alleged discovery was made about five or six years prior to the date of Willison's testimony before the Court of Private Land Claims, which latter date was May 3, 1900, which would make the discovery not earlier than 1894.

The subsequent conduct of the alleged discoverers is related in the testimony of J. P. McNulty (R.,

40–43) and the testimony of appellant, Sena (R., 19–21). After Sena obtained his deeds in 1895, he instituted suit in the district court for possession of the grant against J. P. McNulty, which he was finally compelled to dismiss, and then instituted suit in the Court of Private Land Claims, on September 29, 1899, for a confirmation of the grant as complete and perfect title.

The appellant, Sena, testified quite at length upon the pedigree of the persons from whom he purchased, as detailed to him by them and others, which it is deemed unimportant, since the family pedigree is quite well established by the documentary evidence stipulated into the record, showing that appellant's grantors were lineal descendants from the original grantee, José de Leyba.

On pages 19 to 21 of the record, Witness Sena shows how he happened to purchase an interest in this claim; that he went down to the property with two attorneys; that they knew of the turquoise properties at the time as being within the claim, and after that visit he purchased the interest; that, although he had spent all his life in Santa Fe, he had never heard of the existence of the grant until within a year or so before he bought, when he got the information from Mr. Purdy, the attorney who had come across the grant in looking up the south boundary of what is known as the Sebastian de Vargas grant.

The Government undertook to show by abundant and reliable testimony that no such grant as that

claimed was known personally or by tradition in the vicinity where claimed, and to that end the testimony of a number of the oldest men in the community was presented.

The testimony of six of these—*Nasario Gonzales*, age 83, living at La Cienega; *Jesus Narvais*, born in 1819, living at La Cienega; *Francisco Romero*, age 83, living at La Cieneguilla; *Francisco Bustamante*, age 83, living at La Cienega; *Jose Benevides*, born in 1827, living at La Cienega; *Susano Leyba*, age 66, living at the town of Cerrillos, and *Antonio Bustamante*, age 73, living about a mile from La Cienega—was taken before Mr. Justice Stone on February 23, 1900, upon proper notice to claimant. This testimony appears in the record at pages 135–162, and without repeating in detail what was testified to individually by these aged witnesses, all residents of the immediate vicinity, in some instances from their very birth, it is believed that the record justifies the assertion that they all testified to thorough familiarity with the premises claimed, to having used it or seen it used for fifty years or more; to the fact that no such grant as the Jose de Leyba grant has ever been heard of or claimed in that vicinity; that from the earliest times no one has occupied this land claiming it as a grant, but that, on the contrary, it has been considered and used by the community from time out of mind and without objection from anyone as public pasture land; that there are on the land the ruins of some shepherds'

huts constructed within twenty years by Jesus Narvais, one of the witnesses above named, but that before these were built there were no ruins of any kind. The witnesses further testified that the only occupancy that has characterized this tract, outside of the common occupancy for pasturage above referred to, has been within recent years by the American Turquoise Company and by certain holders of Government entries, all of them being codefendants with the Government, and holding adversely to the grant. They also testified that there was not known in that section of country, or at the place claimed by plaintiff for the south boundary of his grant, an arroyo known as the Arroyo del Oregano, or the arroyo called Cuesta del Oregano; and that there was nowhere in that vicinity, either at the place claimed by plaintiff as his west boundary or elsewhere, any property known as the lands of Juan Garcia de las Rivas; and witness Nasario Gonzales especially deposed to the fact that the lands of La Cienega, where he and the other witnesses live, has never been known as the lands of Juan Garcia de las Rivas, nor is that name mentioned in any of the old papers as applying to the La Cienega tract, where they live. The witnesses likewise testified to the fact that there were no lands of Sebastian de Vargas (claimed by plaintiff as his north boundary) in that vicinity, the only lands known by that name lying east of the Camino de en Medio, which is 12 or 14 miles from La Cienega. (R., 140.) It may be here remarked that the decision of the Court of Private Land Claims upon the Sebastian

de Vargas grant, as shown by the opinion of Mr. Justice Sluss and the decree, both in evidence, expressly limited that claim to the lands lying east of the Camino de en Medio. The result is that the location of the De Vargas lands, as judicially determined by the Court of Private Land Claims, does not at any point come within miles of the tract here claimed. The witnesses further testified to the fact that the country claimed is a bare level plain, devoid of timber and woods and absolutely without water for irrigation, thus showing that it could not have been the premises in contemplation in a petition asking for a piece of land and woods vacant and unsettled, enough for a half a *fanega* of corn-planting land. (R., 112.) It was also shown by these witnesses that there were in olden times no evidence of cultivation in and around Coyote Spring or elsewhere on this tract. There was also considerable testimony from these witnesses as to topography, and especially as to the fact that the old road from Cienega to Galisteo ran east of the turquoise mines. These facts, which bear only upon the boundaries of the grant if confirmed, are not properly for discussion upon the record as here presented.

In addition to these aged witnesses whose testimony was presented before Mr. Justice Stone, the Government produced at the trial several other witnesses of very considerable age who testified to the same state of facts.

One of these, *Susano Leyba* (R., 25–36), gave his age as 66, and stated that he had been raised at Bonanza,

which is within a mile or so of the property in question, and that he had always been acquainted with that section of country, having pastured over it from the time that he was less than 12 years old; that at no time had he ever heard of the Jose de Leyba grant, or any other grant covering that land, and that no one ever had interfered with pasturing there, it being regarded as common pasture land; that when he first knew the land there was no one living on it, or planting it, and there were no ruins of houses, evidence of former cultivation, or anything of that character, on the land. Witness also described the land as being devoid of timber and without water adequate for planting, the Coyote Spring yielding barely enough for drinking purposes. He also testified to the fact that there was no arroyo at the place located by claimant, or elsewhere in that vicinity, bearing the name of Oregano or Cuesta del Oregano, and likewise that he had never heard the lands of La Cienega called the lands of Juan Garcia de las Rivas. The cross-examination of this witness, which was quite lengthy, was confirmatory of his knowledge of the lands and natural objects in that section, although showing that in a number of instances, as, for instance, the Sitio de Juana Lopez and the Sitio de los Cerrillos, he knew the tracts by those names and not as grants.

Alejandro Montoya (R., 63–67), likewise sworn for the Government, testified to being 77 years of age, and to living in Cerrillos for about sixteen years, but to having been born in La Cienega, and thus being well

acquainted with the land in controversy; to the fact that he had never known of an arroyo down there bearing the name of Oregano or Cuesta del Oregano, nor had he ever heard of a claim of a grant in that vicinity under the name of the Jose de Leyba grant. He described the land around the turquoise hill as being a plain, and as having been used indiscriminately for pasture by himself and others in the past, and as having been so used without permission from or objection from anyone, and that the first he had heard of a claim of grant out there was the year before. Witness also testified to the fact that he had never heard out there of the lands of Juan Garcia de las Rivas, or of the pueblito de los Leybas, or the pueblo Viejo de la Cienega; and that when he first knew the Coyote Spring, as a young man of about 18, there were no ruins there. Being asked as to the plant called *Oregano*, witness testified as to his having seen it growing in a number of places, especially up toward the east, toward the mountains, it growing pretty near anywhere when it rains.

Gabriel Sena, sworn for the Government (R., 67–70), testified to being 57 years of age, to having lived at La Cienega ever since he was born, and to being well acquainted with the section in controversy. He testified that he had never heard of the claim of Jose de Leyba, or the Arroyo Oregano, or the Arroyo of the Cuesta del Oregano, or the lands of Juan Garcia de las Rivas down there; that in the early days this land

was not cultivated by anyone, but was used for pasturage by "everybody from Cienega," the pasturage being free and without objection from anyone; that garden cultivation had been accomplished there, not by irrigation, but by depending on the seasons and by the use of wells.

J. P. McNulty testified on behalf of the defense (R., 40–43) to his being the superintendent for the American Turquoise Company in the management of their mines, situated upon the land here claimed, and held by location and patent under the mining laws of the United States. Witness testified that although he had been in charge of these properties since March, 1892, the first he learned of this grant claim was in 1895 or 1896 (R., 41), after the confirmation of the Los Cerrillos tract by the land court. Witness described the visit of plaintiff and his attorneys to the mines in question in 1895 or 1896, about the time of plaintiff's purchase from the Leybas, at which time witness informed them that he was getting $200,000 out of the mines. Witness testified to the topographical conditions surrounding the mines, the fact that there was practically no vegetation, and indeed that water had to be hauled by him over 2 miles for domestic purposes; and also to the fact that his company had had possession there since 1891, and their possession had never been interfered with or attacked.

Clayton G. Coleman (R., 43–54), sworn on behalf of the Government, testified that he was a special agent of the Court of Private Land Claims, and that in the

performance of his official duties he had examined the papers in the cause, and had also visited the premises claimed a short time before the trial. On this visit he called on the oldest people living anywhere in that country (among them the aged witnesses presented by the Government) for information as to the boundary calls of the grant, and he also visited the natural objects set forth by plaintiff as his boundaries, so far as he could ascertain them; that the only boundaries he could identify were the San Marcos road, laid down on the sketch map filed by claimant as his east boundary, and the road from Los Cerrillos to Pecos, alleged to be the north boundary; that he was unable after inquiry from all the old people in the vicinity to find the lands of Juan Garcia de las Rivas, or the lands of Capt. Sebastian de Vargas. Witness described the San Marcos road as running not only on the east of the tract claimed, but also as extending for miles north and south thereof, having its origin in the city of Santa Fe, in leaving which it runs on the west front of the Territorial capital. Witness testified that he made every effort to locate the Cuesta del Oregano, and the Arroya of the Cuesta del Oregano, mentioned in the grant as its south boundary; but his inquiry among all the old people showed that there was no such arroyo known in that section of country, and indeed the only arroyos there located bear other and well-known names. Witness described the Coyote Spring as being about 2 miles north from the San Marcos Spring with a sort of divide about 50 feet in

height between the two springs; that the Coyote Spring yields only enough water for drinking purposes, and that the spring is outside of the grant claimed by Sena as the same is delineated in his sketch map by legal land subdivisions, and that there were no other water sources on the grant. (R., 51.) Witness identified the map tendered with his evidence as defendant's Exhibit A[1] (R., 163) as correctly showing the natural objects so far as they could be identified, and also the location of such objects as that location is claimed by plaintiff. Witness testified to the fact that the public surveys had been extended over this tract since 1861, the plat having been filed in the land office on March 24, 1885 (R., 48), and that within the tract were a number of homesteads and other entries, some of which had been patented, and upon which many improvements had been made. The testimony of the witness gives the list of these locations, and they also appear on his plat introduced in evidence. This plat also shows that the Cerrillos grant, confirmed and officially surveyed under the direction of the Court of Private Land Claims, as a perfect grant made in 1788 (as appears more in detail from the decree and official plat in evidence, R., 182–183), lies to a large extent within the claimed limits of this Leyba grant.

The testimony of Mr. Will M. Tipton (R., 54–63) was taken with reference to the topography of the country and the location of various other land grants with the view of showing that this grant, as described

by boundaries, was most likely located just south of the Territorial capitol in the city of Santa Fe. The discovery of the will of Simeon de Leyba and the deed of Salvador Leyba to Juan Angel Leyba, in which the Coyote Spring seems to furnish a *locus* for the claim, although, strangely enough, the expediente makes no mention of the Coyote or other spring, renders unimportant many of the archive documents used in connection with Mr. Tipton's testimony which need not be considered, viz:

Archive documents, to wit: Nos. 24, 527, 1043, 960, 962, being, respectively, Exhibits C 1 (R., 164), D 1 (R., 166), E 1 (R., 168), F 1 (R., 170), G 1 (R., 171), H 1 (R., 173), I 1 (R., 174), all of which are included in the record from page 154 to 175, both inclusive.

Archives No. 313 and 640 (R., 176–177) show that Capt. Juan Garcia de las Rivas and Capt. Sebastian de Vargas both owned lands prior to 1728, lying very near Santa Fe and just south of the Santa Fe River, which were located by Mr. Tipton as being adjacent.

The decree of the court confirming the Sebastian de Vargas grant and the plat of the survey made pursuant thereto were also introduced (R., 178–179), showing that that grant as judicially located is not within many miles of the lands here claimed, and that it can not, therefore, be the north boundary of these lands as pretended by claimant.

The title papers of the San Marcos grant, claimed to be coterminous with this grant, were also presented (R., 180), showing that that grant made in 1754, and

thus years after this grant, and alleged to adjoin this grant, contains no reference whatever to its existence as a boundary or otherwise, the north boundary of the San Marcos grant being recited to be "some red rocks on an arroyo."

For similar purposes the petition, title papers, decree of confirmation, approved plat, and field notes of the Los Cerrillos grant were introduced (R., 182–193), showing that, although this grant lies largely within the claimed limits of the Leyba claim, the granting officer in 1788 made no reference whatever to the existence of the Leyba grant, and the officer who conferred juridical possession equally omitted any reference to the existence of such a claim in the vicinity; and this despite the fact that it was customary under the Spanish system for the officers executing a grant or giving possession to summon adjoining settlers, if there were any.

With the introduction of the affidavit of Mariano Sena, the plaintiff, executed on December 30, 1897 (R., 193–194), and the admission of record by claimant's counsel that this claim had never been presented to the surveyor-general of New Mexico for action under the act of 1854, or otherwise (although plaintiff disclaimed any obligation on the part of claimant to take such action), the Government closed its case.

In rebuttal, claimant presented as a witness *Antonio Jose Campos* (R., 71–85), who testified to being 69 years of age, and being a resident of San Miguel County, N. Mex., although a native of Santa Fe. Witness

testified to having known of the country in controversy since he was 15 years of age, or since 1845, by reason of having been in the employ of one Gaspar Ortiz y Silva, and that such acquaintance had continued until he moved to San Miguel County in 1865 or 1866; that he knows the Coyote Spring and the San Marcos Spring, the former being a water hole very near an arroyo called the Arroyo del Oregano, and that toward the east from this Coyote Spring are some ruins which he first saw when he was down there as Mr. Silva's manager in 1853 or 1854. Witness described these ruins as being at that time about a yard and a half high, and constituting three or four rooms of stone and mud. Witness testified, over objection, that he had heard of these as being the houses of the heirs of a certain Jose de Leyba, and about this being the Arroyo del Oregano, from certain old men whose names he gave (R., 73). Witness was asked (R., 73) if he had ever learned "from any of these old men why that house *had been abandoned* near that Coyote Spring," and replied that he was informed that they were driven away by the Indians, who killed at the Cuesta del Oregano there a man by the name of Juan Angel, who was a Leyba, the son of Salvador Leyba, or at least so he was told. He further testified that while he did not know anything about the boundaries, two old men had told him that it was a grant given by the Government to Jose de Leyba, and extending from the Coyote Spring to the Cienega (R., 73). Witness fixed the Cuesta del Oregano, as it had been pointed out to

him, as being a little toward the west from the Coyote Spring. The attention of the court is called to the fact that the sketch map presented by claimant, as well as all his other testimony, locates this *cuesta* east of the Coyote Spring.

On cross-examination witness testified that while he had come from a distant county to testify, he had never talked with the plaintiff or anyone else about the case before going on the stand, and, indeed, did not know the plaintiff at all (R., 74). He testified that before going to San Miguel county in 1865, and while acting as manager of Silva, he lived in the city of Santa Fe, and that his acquaintance with the land in question was derived from business trips and from the fact that Silva's cattle were pastured down there—pasturage all over that country being *without objection from anyone*. Witness was first at the Ojo del Coyote sometime prior to 1846, and the last time in 1861 (R., 76). As showing that at this early date there was no claim of ownership to this land, the following testimony of witness is pertinent (R., 78).

> Q. That plain to the north and east of Ojo del Coyote, how was that used at the time you were down there pasturing?
>
> A. The people of La Cienega used to use it by letting their animals loose on it, and were in control of my stock in the Arroyo de Vasquez.
>
> Q. Did you come on these plains to the north of the Ojo del Coyote?
>
> A. No; I said that we used to control our stock toward the south.

Q. And the people of La Cienega used to pasture over there, did they?

A. Yes; it was pastured all over by all these people.

Q. It was general—it was in general that all these people pastured their stock there? Nobody ever objected to their pasturing, did they?

A. *Nobody opposed it.*

Q. *It was all common for pasture?*

A. *It was free.*

Q. *And that was when you were first there?*

A. *Yes, sir; the first time.* I saw it always since I lived there.

Witness further testified (R., 78) that he was at the Ojo del Coyote only several times after 1846; that it was a very poor spring, and he "was not much in love with it" and did not know whether it was in an arroyo or not, as he did not "take enough interest in anything" (R., 78).

Further cross-examined, witness showed a very marked lack of knowledge of the surrounding country, placing the Arroyo del Oregano a mile and half or two from the Coyote Spring (R., 80), when all the other testimony is that it comes from and is toward the east; placing the Arroyo de la Piedra to the east beyond the spring of San Marcos, when all the maps put it in the immediate vicinity of the Coyote Spring and far north of the spring of San Marcos; testifying that he did not know where the Arroyo del Oregano joins the Arroyo de la Piedra, or whether it joins it at all, not having paid close attention; and this notwithstanding the fact that witness pretends to an accurate knowledge of the

locality, one that is urged should prevail over the testimony of eight or ten witnesses who have spent the last forty years, not in the county of San Miguel, but at the very land in question; confessing his utter inability to state the distance of the ruins from the Coyote Spring—whether a hundred yards or three thousand; disclaiming knowledge of how the arroyo containing the Coyote Spring runs, whether east or west, never "having paid much attention," and in fact having stopped at this spring apparently only one time, not being "very much in love with that arroyo or with that spring," although he had passed by there several times; admitting that he did not know whether the spring was in an arroyo or not, because he was not there himself very long, having just established the ranch for the herders and not having paid close attention. In the further progress of his cross-examination (there having been an intervening recess) witness recalled his statement that he had not talked with Sena, the claimant, and with commendable but rather tardy frankness admitted that he had talked with Sena, and even that Sena was paying the expenses of his trip.

R. B. Willison, sworn on behalf of claimant (R., 8697), testified to being a resident of Santa Fe thirty-three years and to his familiarity with the premises in question. He stated that he knew the pueblo Viejo de la Cienega and that the Arroyo de la Cuesta del Oregano had been shown to him as located a trifle over a mile north of the San Marcos Spring; that he knew the

Coyote Spring, which is located in an arroyo about 400 yards west of the road leading from San Marcos to Cerrillos and between a fourth and a half mile west from where it joins the Arroyo Gallinas; that the bearing of the arroyo in which the spring is located is nearly west, south of it going toward San Marcos Spring, there being considerable elevations; that the Cuesta del Oregano is northeast of the Coyote Spring (it will be recalled that the last witness, Campos, placed it southwest); that the Coyote Spring is situated in the Canyon de los Arroyos and the Arroyo del Oregano is about 300 yards northeast from the Coyote Spring (R, 87). (It will be recalled that Campos puts this arroyo a mile and a half from the Coyote Spring and southwest of the spring.) Witness testified (R., 87) to having known and visited the Coyote Spring in 1869, at which time he saw some extensive ruins, among others a chimney at least 9 feet high, and having the appearance of having been formerly inhabited, which witness stated, over objection, that Don Manuel Baca y Delgago, at that time about 78 or 80 years of age (R., 88), had informed him had been occupied by the descendants of the original grantee, as had been some other ruins between a fourth and half a mile to the east on the margin of what had been pointed out to him as the Arroyo del Oregano. Witness further testified (R., 89) that evidence of these ruins was still to be seen, but greatly diminished. Witness disclaimed any knowledge of the Arroyo del Oregano or Cuesta del Oregano until about seven years ago, when Don Manuel Baca y Delgado

had pointed them out to him. It appears from the record (R., 91) that this was about the time when the De Vargas grant, in whose prosecution witness took a prominent part, was being vigorously agitated with a view of extending out the land in question, but with the indifferent success shown by the decision of the Court of Private Land Claims. Witness being asked as to the western boundary of the lands of the De Vargas, testified fully as to that boundary as originally contended for by claimants and as rejected by the court in its decision. Referring to the north boundary of the San Marcos grant, witness puts this about 265 yards south of the Coyote Spring, and he identified the San Marcos road, as delineated on claimant's sketch map, as having been so known by him for thirty-three or thirty-four years. Witness testified to the fact that on his first visit to Coyote Spring there was no evidence of land having been cultivated in that vicinity, but that recently ranches had been taken up northward from this spring, but that there was no permanent water flow, for irrigation and cultivation must depend upon artesian flow or flood water. On cross-examination (R, 91) witness referred to the fact that he had discovered the archive upon which this claim is based in making investigation upon the De Vargas case, and that he had thereupon made two or three field examinations of the land as well as plats of it, the plat attached to plaintiff's petition being a copy of one made by him. On his attention being called to the fact that this last-named plat shows the Coyote

Spring located in the Arroya de la Piedra, when witness (R., 93) had just testified that it was in the Canyon de los Arroyos, witness (R., 93) swore that that copy was not correct either as compared with the original made by him or with the conditions on the ground. Being asked to locate the Arroyo del Oregano and its junction with the Canyon de los Arroyos, upon defendant's Exhibit A[1], witness did so, indicating the course of the arroyo by the word arroyo in red ink, the letter "A" in red ink locating the junction. He testified that this Arroyo del Oregano hardly extended back farther than a mile from the Coyote Spring.

Agustin Ramirez, likewise called by the plaintiff in rebuttal (R., 97–103), testified to being 53 years of age and to residing at Galisteo. He gave the name of his mother as being Antonia Leyba and his father Serafin Ramirez; that his mother's mother was named Josefa Leyba, her father Salvador Antonio Leyba, her grandfather Simon Leyba, and her great grandfather Jose Leyba. He testified that his mother had a sister, Apolonia Leyba, and a brother, Jesus Leyba, and that Salvador Leyba, who lived at Peña Blanca, was an uncle of his mother, a statement of relationship that is clearly a mistake, as under the genealogy as given they were evidently cousins. He testified that Salvador was a son of Juan Angel Leyba, who in turn was a son of Salvador Leyba, and that he had heard that Juan Angel had been killed by the Indians at the Cuesta del Oregano (R., 97–98), which is about 300 yards, more or less, to the north of San Marcos

Spring, according to witness's recollection, which he admits was very limited. Witness stated that he did not remember any grants in New Mexico which any of his family claimed to own, but later, in response to a question mentioning the Jose de Leyba grant by name, stated that he had heard from his mother "that that grant belonged to them, to their grandfather," situate about 14 or 15 miles from Santa Fe, and up to the north from where the Coyote Spring is. Witness had also heard of the Pueblito de los Leybas, but did not know where it was; and had also heard that Juan Angel Leyba was killed 2 or 3 miles from where he lived in going down the slope to the Placers. Witness did not know the time of Juan Angel's death, except that it occurred before the birth of witness, and thus some time prior to 1846. Witness testified in detail as to the heirs of his mother's brothers and sisters, and also to the fact that his mother's full name was Maria Antonia Leyba de Ramirez.

On cross-examination he testified to the fact that he was entirely lacking in knowledge of his ancestry so far as it lay outside of the Leyba family, and the only excuse he could give for his lack of knowledge was the fact that "it is a long time," and he "did not remember" (R., 100). He also swore that his mother always went by the name of Leyba de Ramirez, and was never called anything else; that she, as well as witness, had testified in the case of the *United States of America* v. *The San Pedro and Cañon del Agua Company* in the district court of Santa Fe County; that he was

present when she testified, and that was the name she gave as her name; that he saw her sign her name to her testimony, and that to witness's certain knowledge that was the name she used. As showing the utter fallacy of this testimony, the Government (R., 215–225) offered the testimony of Ramirez and his mother, given in the Cañon del Agua case, showing that she gave and signed her name all through that testimony as Maria Antonia Sandoval. Deeds tendered in the same case were offered, showing that in signing these instruments witness's mother never used the name Leyba de Ramirez, but always Maria Antonia Sandoval (R., 226, 228, 229, 235, 236, 238).

This shows the total unreliability of the statements of this witness and the care which should be exercised in determining the force to be given any statement he might make, which is not completely corroborated.

Eligio Sedillo, also called by claimants in rebuttal (R., 103–105), testified to being 67 years of age and to having lived at Santa Fe all his life; that he knew the Coyote Spring as early as perhaps 1854, at which time there was a ruin of perhaps four rooms to the east of the Coyote Spring, the walls in some places being about 2 feet and at other places a little higher.

Claimant further offered in rebuttal, for purposes which were not disclosed, the decrees of confirmation of the Los Cerrillos grant, No. 79, and the Sitio de Juana Lopez grant, No. 82, and also the grant papers of the San Marcos grant, already introduced by the Government. There was also presented (R., 123) deed

dated November 22, 1844, from Domingo Fernandez to Demetrio de la Ora, deed dated November 23, 1846, conveying certain property by Demetrio de la Ora to Eugene Leitendorf (R., 124), and deed by partition made by Domingo Fernandez, dated February 5, 1857 (R., 125), being a partition of the lands among the heirs of his mother, Maria Francisca de Sena, all these presumably for the purpose of showing that the De Vargas lands extended westward as far as the lands here claimed. It is assumed that these documents will be as lacking in efficacy to establish that position now as they were on the trial of the De Vargas claim itself. The opinion of the court in the De Vargas case, already tendered by the Government, was also tendered by claimant, as was archive 180. The relevancy of this last document does not appear unless it consists in the references to Juan Garcia de las Rivas and the lands of Capt. Sebastian de Vargas, but it is not believed that this latter document throws any such light upon the issues in the case as requires its further consideration in this statement.

A stipulation as to the status of the Muñiz entry, one of the turquoise claims, was entered in the record (p. 109), and after the taking of the testimony of Fernando Nolan, also in rebuttal (which testimony, however, proved to be entirely immaterial), both parties on May 4, 1900, announced closed and submitted the cause.

On May 10, 1900, the court, through Mr. Justice Stone, announced its unanimous conclusion rejecting

the claim on the ground that the same was not at the date of the treaty a perfect and complete title; and not having been presented within two years from the taking effect of the act of March 3, 1891, the claim was thereby abandoned and forever barred (R., 240).

A decree was accordingly, on May 10, 1900, entered, rejecting the claim and dismissing the petition (R., 240).

On March 5, 1900, claimant was allowed an appeal to this court.

I.

The granting instruments conveyed title only to a piece of land that would contain a half a fanega de mais de sembradura, a little more or less.

A consideration of the recitals contained in the expediente consisting of the petition, granting order, and act of possession (R., 112 and 113), leads directly to conclusion that the title intended to be conveyed was to a piece of land and wood uncultivated and unsettled, that would contain enough land to plant a half a *fanega* of corn, a little more or less. In the absence of other evidence than the expediente, the area included within the grant and within the boundaries given would be construed to include only enough land upon which to plant half a fanega of corn. A *fanega de mais* is a measure of corn which will plant 8.82 acres, and half a fanega would measure 4.41 acres.

The present claim of the location of the natural objects and lands of others named in the petition as bounding the grant will include about 18,000 acres.

The discrepancy between the quantity asked for and that included within the boundaries, as shown by the evidence, is so glaring as to arrest serious attention. Nothing on the face of the expediente discloses this extravagant difference, and not until the location of the boundaries by evidence outside of the expediente is attempted, is one aroused to the importance of the discrepancy between the title and the present claim.

It is evident by the petition for the grant that the primary thought in the mind of Jose de Leyba was *a piece* of land sufficient for planting a half a fanega of corn, or about 4.41 acres. The total area contained within the boundaries, amounting to about 18,000 acres, was not expected by the petitioner to be given him with full title. The expressed purpose was the cultivation of *a piece* of land by planting corn, not the acquisition of a large tract of land for the general purposes of ranching.

The granting order and act of possession seem to treat it as a piece of land of no great extent. Quantity was of the essence of the entire grant, else the alcalde would have named the outboundaries in the act of possession. His language is that "I arrived at the spot and place (puesto y paráje) for which the applicant asks, taking in my company Jose Manuel Chirmos and Capt. Sebastian de Vargas, and having examined the lands and woods which the said applicant asks for, I took him by the hand, in the presence of the said parties, performing the customary ceremonies, pulling up grass, throwing stones, and shouting, as

evidence that it was his. I gave him the royal possession in the name of His Majesty (God preserve him), in order that in his name and by his royal word the aforesaid party, his children, and heirs may enjoy it."

If 18,000 acres, instead of a small cornfield of 4 or 5 acres, were intended to be included within the so-called juridical act, all doubts could have been removed by defining the boundaries of the tract then and there, that the grantee and others might respect and observe them.

The attempt of grantees of land to hold large "excesses where the indicated boundaries are supposed to cover only a certain quantity of land which, when resurveyed, turns out to be much larger than as described in the titles," received the attention of the Spanish Crown as far back as the sixteenth century, and in no single instance, either under Spain or under Mexico, has the attempt to hold great excesses of land over the lawful title, by reason of the boundaries upon reinvestigation being found to contain such excess or overplus, been recognized as lawful; but right of disposition of such overplus was asserted both by Spain and Mexico, although privilege or preference was often given the holder to acquire the overplus; but the *jus disponendi* of the excess was retained and exercised by Spain and Mexico, and when unexercised by either passed to the United States.

Such right was asserted and enforced, whether treated upon principles applicable to voluntary grant or purchase and sale.

This question has recently received much consideration by this court in a number of cases appealed from the Court of Private Land Claims affecting grants in the Territory of Arizona.

In the case of *Ainsa* v. *United States* (161 U. S., 208) it was contended by counsel for appellant that where quantity and metes and bounds were both used, any variance should be resolved in favor of that description which was the most certain. While admitting the general rule, Mr. Chief Justice Fuller, delivering the opinion, said:

> So monuments control courses and distances, and causes and distances control quantity; but where there is uncertainty in specific description, the quantity named may be of decisive weight, and necessarily so if the intention to convey only so much and no more is plain. (229.)

The intention to convey about enough land to plant a half a *fanega* of corn, or 4.41 acres, can not be expanded to cover 18,000 acres by the use of the qualifying phrase "a little more or less," and especially when the act of juridical possession does not mention the boundaries of the land of which possession is given.

From the petition and statement of the use for which it was desired, and the act of possession omitting any mention of the boundaries of so large a tract, impresses one with the belief that a small quantity of land was the limit of the grant and the hard and fast application of the common-law rule should find no abiding place in the construction of such conveyances, especially

when considered under the Spanish and Mexican policy of claiming and exercising the right of disposition of the overplus within the outboundaries of such grants.

Any overplus lands within the metes and bounds described is variously known in Spanish and Mexican law as *demasias*, *excedencias*, *excesos*, and *sobrantes*.

The rule applicable to such overplus declared by this court in the *Anisa case* (*supra*) has been affirmed and reaffirmed.

> *Ely's administrator* v. *United States*, 171 U. S., 220; *United States* v. *Maish*, 171 U. S., 277; *Perrin* v. *United States*, 171 U. S., 292; *Reloj Cattle Co.* v. *United States*, 184 U. S., 624; *Anisa* v. *United States*, 184 U. S., 639; *Arivaca Land and Cattle Co.* v. *United States*, 184 U. S., 649.

Whatever influence open, notorious, and exclusive possession might have upon the construction to be placed upon the extent of the title can avail nothing here, for, said Mr. Justice Stone, in delivering the opinion of the court below (R., 240):

> The evidence as to the settlement and occupation of the tract purporting to have been granted, continuity of possession, cultivation, residence, improvement, claim of ownership, notoriety of grant, and knowledge of the existence in the community or by the oldest inhabitants now living, is so vague, contradictory, and uncertain as to be almost wholly wanting.

The vast areas of pasture lands, the woods, and water were usually designated to be for the common use of the people in the vicinity, and such was the

general policy of the Spanish law. No reference or mention is made of the Coyote Spring, the only water anywhere in the vicinity. It is passing strange if this grant covered 18,000 acres, and just on the edge of it was the only available water in all that country, it was not made by the title documents themselves the *locus* of the grant and referred to in some manner, for now it seems to be the main feature in this claim aside from the turquoise mines. It is insisted that quantity was of the essence of the grant and was the controlling feature and indicated the intent of the granting officers and the petitioner. Where doubt arises respecting a royal grant, even a Congressional grant, it is resolved in favor of the Government. (*Slidell* v. *Grandjean*, 11 U. S., 412–437; *United States* v. *Oregon, etc., Ry.*, 164 U. S., 526.) The boundaries given can be treated as the general location within which Jose de Leyba had selected his *piece* of land that would be sufficient to plant a half a *fanega de mais*, or 4.41 acres.

But as tending to show that the entire area included within the boundaries delineated by appellant's sketch map was not claimed at an early date, and as throwing some light upon the extent of the claim and occupation shortly after 1783, attention is called to the plat opposite page 162 of the record, which shows that the Cerrillos grant, confirmed and officially surveyed under the decree of the Court of Private Land Claims as a perfect grant, made in 1788 (R., 182–193), lies to a considerable extent within the claimed limits of this Leyba grant.

It is hardly probable that Leyba was occupying and asserting title under the will of his father, or otherwise the Cerrillos grant of 1788, five years after the death of Simeon Leyba, would not have overlapped it. In this instance it is a clear regrant to someone else of a portion of the land claimed by Sena as being the land of the Leybas. The Leybas as early as 1788 were not exercising possession of the land to the outboundaries, or the Cerrillos grant would not likely have been made. See the case of *Bergere* v. *United States* (168 U. S., 66, 84, 85).

But, as bearing upon the exercise by the Crown of the *jus disponendi* of the overplus within the metes and bounds, the absence of serious, open, exclusive, actual possession anciently begun and consistently continued can not be overlooked as effecting the original intent and assertion of ownership to the exclusion of others in determining the estate granted and extent thereof.

In the case of *Bergere* v. *United States* (168 U. S., 66, 84, 85), it is said:

> The action of the Mexican Government in making grants to third parties of certain portions of these lands, as vacant and unoccupied lands, is also of some importance. The grants were made at times which were long subsequent to the petition of Baca and the making of the return by the alcalde, and were made after an official examination of the lands then granted and a certificate that they were vacant.
>
> We express no opinion as to the validity of these grants, and we allude to the subject only for the purpose of pointing out how the facts

> appear to the Mexican officials, who at that time were engaged in an investigation of the question of occupancy, and who reported the lands mentioned in the respective grants as vacant and unoccupied, which we may assume they would scarcely have done had Baca or his heirs then been in the actual possession and occupation of those very lands.

From all the evidence and upon the newly discovered will and deed the Coyote Spring seems to furnish the *locus* of "the *spot and place* (puesto y paráje) for which the applicant asks;" and around which now seems to cling the only certainty of the location of the general tract except the San Morcas road, for the lands of Juan Garcia de Las Rivas and Capt. Sebastian de Vargas and the arroyo called Cuesta del Oregono are so uncertain of location as to be useless in determining the outboundaries of the small cornfield or the 18,000 acre tract.

If the Coyote Spring was the "spot and place" at which the piece of land, enough to plant a half a *fanega* of corn, was located and so as to include it, then quantity is the most certain element of description contained either in the expediente or the other documents and oral testimony in the record.

II.

This grant was not perfect and complete at the date of the treaty, and is barred by the act of March 3, 1891, as well as upon principles of equity.

The first of these positions is the ground upon which the court below rejected the claim.

This grant, made in 1728, is subject to the royal cedula of October 15, 1754 (Reynolds, p. 50). That cedula in its preamble is recited to be for the protection of the Crown against those who "maintain themselves on land usurped without title," and was, pursuant to a well-established policy of the Spanish Crown, consistently adhered to up to the date of the independence of Mexico, and after that date continued by the Mexican nation. Legislation illustrative of this continued policy is found under the Spanish régime in the ordinance of intendants of December 4, 1786 (Reynolds, pp. 59, 61), and the cedulas of March 23, 1798 (Reynolds, p. 65), and of February 14, 1805 (Reynolds, p. 68), and under the Mexican system in the colonization law of August 18, 1824 (Reynolds, p. 121), and the regulations supplemental thereto, dated November 21, 1828 (Reynolds, p. 141). This system was one, in short, by which to take title out of the Crown the concurrence of two separate sets of officers was necessary, the act of the first set of officers granting and conferring possession of the land being subject to confirmation by another officer designated by law. Under the cedula of 1754 the conferring power was (section 5) vested in "the audiencias in their district and to the other officers to whom the power is given by these new instructions," which in the case of "provinces remote," such as New Mexico, was the governor, "with the approval of the royal officers and the acting attorney-general where there is one" (section 12).

Under the ordinance of intendants of 1786 "the necessary confirmations" were to be made by the superior board of the treasury (section 81); and under the Mexican system the territorial deputation or departmental assembly (Reynolds, pp. 141–143) were required to approve before the grant became "definitely valid" (section 5). The evil to be checked by all these requirements is indicated in section 5 of the cedula of 1754, where it is made the duty of the confirming authority to examine as to whether the sale or composition is made "without fraud or collusion" and "at proportionate and equitable prices." The evil attending unrevised alienations is illustrated in the line of Arizona grant cases recently before this court where the boundaries named included many times the quantity paid for; and, in the present case, where an area of 18,000 acres is claimed on a petition for a cornfield.

Instances of cases discussing the necessity for a confirmation are afforded by *Menard* v. *Massey* (8 How., 293) and *Paschal* v. *Perez* (7 Tex., 348).

Applying the law to the facts of the present case, it seems sufficient to simply call attention to the fact that there was no confirmation of the title issued or of the possession given, and that at the date of the treaty this was still the condition of the title, rendering it at that date incomplete and imperfect, and thus subject to the limitation of two years imposed by section 12 of the land-court act.

The suggestion made in the court below that a confirmation should be presumed from the lapse of time

between the date of the grant and the date of the treaty and the possession proved is not tenable either as a matter of law or fact. Under the Spanish and Mexican régime the doctrine of presumptions did not extend to that extent. The law of presumptions can not supply the lack of an act which the express requirements of the granting power provides must exist, and it has been consistently held by Mexican jurists that a confirmation under this cedula will not be presumed even from long-continued possession.

The testimony of the witnesses for the Government—men upward of 80 years of age—show that possession had not been held within their knowledge, either personal or as a matter of tradition. This court has held in the case of the *United States* v. *Pendell* (185 U. S., 189, 197) that it will defer to the judgment of the court below on matters of fact such as possession; and in that case the views of a majority of the court, declaring the possession proved to be most satisfactory, were followed and adopted. In this case the court below, speaking through Mr. Justice Stone, says (R., 240):

> The evidence as to the settlement and occupation of the tract purporting to have been granted, continuity of possession, cultivation, residence, improvement, claim of ownership, notoriety of grant, and knowledge of the existence in the community or by the oldest inhabitants now living, is so vague, contradictory, and uncertain as to be almost wholly wanting.

And the court follows with this observation:

> There is no evidence in this case, either by the documents presented or otherwise, that these requirements of the ordinance of 1754 were ever complied with. Nor is there in the nature of the case or upon any of the facts presented in evidence any grounds that will justify a presumption of such compliance with the requirements for confirmation.

The express determination by the court below on the value and weight of the testimony presented to establish possession will be found to accord entirely with the proofs as submitted, and under such proofs there is no justification for indulgence in presumptions flowing from a serious, open, exclusive, actual possession, anciently begun and consistently continued.

Should the title be construed to cover the land according to the metes and bounds, regardless of the quantity mentioned, then, in order to invoke the presumption of approval of the grant by reason of the lapse of time, the facts must clearly appear upon which to predicate such presumption, viz, that the possession has been so open, notorious, and exclusive that it would be inequitable to decline the indulgence.

The rule of presumption is indulged to supply an admittedly omitted act, because from the facts proven in a given case it would be inequitable and unconscionable to hold otherwise.

When the Court of Private Land Claims is called upon to deal with uncompleted paper titles and indulge in presumption of approval by the former

government upon equitable consideration, is it not by the decree of confirmation completing in judicial form that which was entitled to but had not received that final approval, without which complete vesture did not take place? If so, such case must fall under section 6 of the private land claims act.

If the overplus lands within the metes and bounds can be claimed now, it must be by virtue alone of the equity arising upon the character of possession, which the court might have considered had the suit been instituted within two years from March 1, 1891, but to hold the title complete and perfect to such lands is to say that by the grant of 1728 complete and perfect title passed to the entire 18,000 acres, and nothing remained to be done, and the laws of Spain and Mexico relative to excessive holdings have no application to the present case.

III.

This claim is a stale one and not entitled to recognition, according to justice and right, from a court proceeding upon equitable principles.

The Court of Private Land Claims is one proceeding "as near as may be according to the practice of the courts of equity of the United States." When tested by the rules of equity, what is the standing of the claim now urged? The facts of the case are simply these: A piece of land was granted to one Jose de Leyba in 1728. According to claimant's evidence, and thus from the standpoint most favorable to him, the tract was abandoned, because of Indian hostilities, at

some date prior to 1846. According to the Government's witnesses nothing had been heard of the claim within the memory or tradition of men born as far back as 1817. In this vacant, abandoned condition, used as common pasture and considered as public land, this tract passed under the dominion of the United States by the treaty of 1848. In 1854, six years after the treaty, the surveyor-general was given authority to consider and pass upon claims such as this, and report his conclusions and recommendations to Congress. Still the descendants of Leyba, if any there were, declined to resume possession of what is alleged they held by perfect title; declined, also, to indicate by petition or otherwise, under the act of 1854, that they made any such claim. The public-land surveys were extended over the tract in 1861, homestead and other entries were made, improvements established, patents secured, mining locations made, large and valuable mines developed, and during all this time the Leybas, with an alleged perfect title, made no attempt to assert their rights, and offered no objection. In 1891 the Court of Private Land Claims was established, and all persons having imperfect titles were required to present them within two years; claimant and his grantors still remained quiescent and allowed adverse rights to be acquired and extensive improvements to be made. In 1894, in the prosecution of another suit for confirmation of the Sebastian de Vargas grant, the archive containing the titles here asserted was found and brought to public

notice for the first time in perhaps a century. Appellant, inspired by the mineral value of the property, and operating under methods which were illustrated in the testimony of Francisco Romero (R., 162) and in the peculiar nature of the testimony of the witnesses presented on his behalf, entered upon the search for an heir, and finally in 1895 found two lineal descendants, from whom he secured deeds—deeds to a grant which he, a resident of long standing, had never heard of until the excavation of archive 441. Even then plaintiff declined to seek the establishment of his speculative claim, as it was not submitted to the Court of Private Land Claims for its adjudication until the fall of 1899, when he attempted to secure a confirmation as against the Government and to divest the mineral claimants, who have not yet secured patent, of all they have discovered and developed during their ten years' occupancy. And this upon the archive thus accidentally discovered and without pretense of producing from the hands of claimants the testimonio of which they shall have held possession, or account for its nonproduction. It is not believed that this is the character of claim which a court of equity will tolerate. The laches of the claimant in its presentation, while witnesses who knew of its right to recognition were dying, and third parties who knew nothing about it were establishing valuable adverse rights, place it in the catalogue of stale claims against which the doors of a court of equity are closed, independent of statutes of limitation.

This belongs to the class of cases instanced in *United States* v. *Martinez* (184 U. S., 441), where the claimant's remedy is held upon equitable principles to be barred by delay.

To the same effect see—

Gildersleeve v. *New Mexico Mining Co.* (161 U. S., 573).

United States v. *Moore* (12 How., 209, 222).

Indiana v. *Kentucky* (136 U. S., 479).

United States v. *Repentigny* (5 Wall., 211–218).

Muse v. *Arlington Hotel Co.* (68 Fed. Rep., 637, and cases cited).

Tierbont v. *Millican* (61 Tex., 514).

Looking at this record in the most favorable light for appellant, the Leybas, long prior to the treaty of Guadalupe Hidalgo, appear in no way to have asserted any interest in the grant, but stood by and saw the country pass from Mexico to the United States and neither resumed nor attempted to resume possession of the land. The Congress of the United States, to carry into effect the obligations assumed under the eighth article of the treaty, by which it was agreed to respect rights of property in the ceded territory in existence at the date of the cession, passed an act entitled "An act to establish the office of surveyor-general of New Mexico, Kansas, and Nebraska, to grant donations to actual settlers therein, and for other purposes," approved July 22, 1854 (10 Stats., 308, chap. 103). By the eighth section of this act it was made the duty of the surveyor-general, under rules and regulations to be established by the Secretary of the Interior, to inquire

into and report to Congress upon the validity or invalidity of all claims to lands within the territory ceded by Mexico which had originated before such cession, which report was to be laid before Congress for such action thereon as might be deemed just and proper, with a view to the confirmation of *bona fide* grants.

It was further provided in said section (8) that "until the final action of Congress on such claims all lands covered thereby shall be reserved from sale or other disposal by the Government, and shall not be subject to the donations granted by the previous provisions of this act." This act remained in force until the passage of the private land claim act of March 3, 1891, and was administered liberally and economically in the interest of those claiming lands protected by the treaty.

It is within the judicial knowledge of this court that nearly all of the grants so protected, and to which *bona fide* rights were claimed, were presented to the surveyor-general for investigation and report; many received favorable action by Congress and have long since passed to patent; others were left unacted upon by Congress and have been asserted in the court of private land claims. In nearly all claims filed under the law of 1854 testimony was filed in support thereof, and the benefit of such evidence as was presented may be received by the court of private land claims under the provisions of section 5 of that act (26 Stat. L., 854).

SEC. 5. That the testimony which has been heretofore lawfully and regularly received by

> the surveyor-general of the proper Territory or State, or by the Commissioner of the General Land Office, upon any claims presented to them, respectively, shall be admitted in evidence in all trials under this act when the person testifying is dead, so far as the subject-matter thereof is competent evidence; and the court shall give it such weight as in its judgment, under all the circumstances, it ought to have.

The Leybas, if they claimed and desired to assert their grant, were furnished every inducement and opportunity to present and have preserved the evidence of their rights, thus preventing the United States from treating the land as public domain and inviting citizens to settle and explore the same, invest their means and render the same valuable, upon the good faith of the invitation given by the United States and the total absence of any facts which would put either the Government or themselves upon guard against the probable ultimate assertion of this claim.

Knowledge on the part of the Leybas of the passage of the act of July 22, 1854, and their right to file their claim with the surveyor-general and preserve their evidence is to be presumed. (*Gildersleeve* v. *New Mexico Mining Co.*, 161 U. S., 573, 580.)

The United States as early as 1861 extended the public surveys over the same; no protest, no claim, no objection, and no step was taken to apprise anyone that the Leyba family in any way claimed an interest in this property adverse to the United States, or anyone

else. Although homestead entries were made upon the land; although as early as 1891 mining locations were made upon the same; although valuable turquoise mines were discovered, opened, and worked, still no claim and no protest was made by the Leybas, and probably no claim would have ever been made in any tribunal or in any office of the Government had not the turquoise mines been discovered and opened.

Sena, after acquiring the Leyba interest in 1895, did not seek the jurisdiction of the Court of Private Land Claims, but, standing upon his title, proceeded in the district court to assert it against McNulty, the manager of the Turquoise Company. Abandoning that court because of the overruling his application for continuance, he tardily sought this purely promissive jurisdiction, which must soon pass away by operation of law.

The land court was not created for the benefit of perfect grants; they did not need it, and should be held to the rule announced by Mr. Chief Justice Fuller in the case of *Hammond* v. *Hopkins* (143 U. S., 224, 250), viz:

> No rule of law is better settled than that a court of equity will not aid a party whose application is destitute of conscience, good faith, and reasonable diligence, but will discourage stale demands, for the peace of society, by refusing to interfere where there have been gross laches in prosecuting rights, or where long acquiescence in the assertion of adverse rights has occurred.

In the case of *United States* v. *Martinez* (184 U. S., 441, 449), appealed from the Court of Private Land Claims from a money judgment for lands patented by the United States, which were located within the boundaries of a confirmed perfect grant, Mr. Justice Brown, in the opinion of the court, applying the doctrine of laches, as distinguished from the bar of the statute, said:

> Under the Court of Claims act petitions must be presented to that court within six years from the time the cause of action accrues (act of March 3, 1887, c. 359, 24 Stat, 505), and while there is no limitation of the time for petitions of this character to be filed in the Court of Private Land Claims, we have held that a similar act required that cases should be heard and disposed of upon equitable principles, and that we were "bound to give due weight to lapse of time." (*United States* v. *Moore*, 12 How., 209, 222; *Indiana* v. *Kentucky*, 136 U. S., 479, 509, 510.) We think there has been such unexplained delay in this case as to justify the court in holding that petitioners had abandoned their claim for a pecuniary judgment.

Applying the rule which pervades cases disclosing such facts as appear in this record, even if the title was complete and perfect at the date of the cession (1848), justify the court in holding that appellant and his predecessors, with whom he is in privity and upon whose rights his own must depend, did not intend to seek the recognition of their grant by this government, but elected to stand upon it as title paramount to that

of the United States and its grantees. He should be held to the legal consequences of such acts by permitting large and valuable interests to grow up under their very eyes without objection or protest.

IV.

This claim is void because of abandonment.

This position is to some extent covered by the defense of laches, elsewhere urged, but it goes further and rests upon different principles.

But as tending to show that the entire area included within the boundaries, as delineated by appellant's sketch map, was not claimed at an early date, and as throwing some light upon the extent of the claim and occupation shortly after 1783, attention is called to the plat opposite page 162 of the record, which shows that the Cerrillos grant, confirmed and officially surveyed under the decree of the Court of Private Land Claims as a perfect grant, made in 1788 (R., 182–193), lies to a considerable extent within the claimed limits of this Leyba grant.

It is hardly probable that Leyba was occupying and asserting title under the will of his father to the limits now claimed, or otherwise the Cerrillos grant of 1788, five years after the death of Simeon Leyba, would not have overlapped it. In this instance it is a clear regrant to some one else of a portion of the land claimed by Sena as being the land of the Leybas. But as bearing upon the abandonment, the absence of

serious, open, exclusive, actual possession, anciently begun and consistently continued, the regrant of a portion under the Cerrillos grant is important. See the case of *Bergere* v. *United States* (168 U. S., 66, 84, 85).

It is said:

> The action of the Mexican Government in making grants to third parties of certain portions of these lands, as vacant and unoccupied lands, is also of some importance. The grants were made at times which were long subsequent to the petition of Baca and the making of the return by the alcalde, and were made after an official examination of the lands then granted and a certificate that they were vacant.
>
> We express no opinion as to the validity of these grants, and we allude to the subject only for the purpose of pointing out how the facts appear to the Mexican officials, who at that time were engaged in an investigation of the question of occupancy and who reported the lands mentioned in the respective grants as vacant and unoccupied, which we may assume they would scarcely have done had Baca or his heirs then been in the actual possession and occupation of those very lands.

It matters not why the owner has become dissatisfied with his land; his departure from it with the intention to abandon it caused it to cease to be his. This was clearly the Spanish law, and is succinctly stated in 1 Partidas, law 50, page 365, where it is said:

> If a man be dissatisfied with his immovable estate and abandons it, immediately he departs

from it corporally, with an intention that it shall be no longer his, it will become the property of he who first enters therein.

See—

Landers v. *Perkins* (12 Mo., 238).
Fine v. *St. Louis Public Schools* (30 Mo., 166).
Tayon v. *Ladew* (33 Mo., 205).
Clark v. *Hammerle* (36 Mo., 639).
Sidest v. *Duran* (67 Tex., 256, 262).

This land, abandoned long prior to 1846, passed to the United States as public land under the treaty of 1848.

After the treaty there was never any attempt by the Leybas to retake or reclaim possession. So far as this Government is concerned, if there was any need of a formal resumption of ownership analogous to the common law "office found," that was effected, as held in *Repentigny's case* (5 Wall., 211), cited supra, by the extension of the public surveys of the United States over this tract forty years ago.

Whether this title be treated as perfect or imperfect to limits of the outboundaries, it was certainly abandoned during the time it was subject to Mexican jurisdiction and subject to their laws governing such cases.

Juan Angel Leyba, after acquiring the property from his father on August 9, 1834, was killed by the Indians and possession never resumed under either government.

The following is a translation of a law passed by the most excellent departmental council of New Mexico on the question of abandonment, and duly promulgated.

ARCHIVE 1140.

Citizen Ramon Abreu, prefect of the first district of the department of New Mexico, makes known to the inhabitants thereof that the following has been communicated to him by the office of the secretary of said Government:

"Albina Perez, colonel of cavalry of the permanent army, governor of the department of New Mexico, makes known to the inhabitants thereof that the most excellent departmental council (junta) has seen fit to decree,

"First. Every individual who abandons the land upon which he has settled and which he acquired by grant, with the intention of establishing himself elsewhere to live there, and does not leave someone to take his place in ordinary labor, shall lose the real property he had acquired.

"Second. The acting justice of the peace will immediately give notice to this Government of those residents who go to live elsewhere, that it may be understood that the property the latter had may be donated to another.

"Third. These resolutions will be communicated, through the proper channels, to the municipalities of the department for due compliance therewith.

"Fourth. Those who, under articles first and second, incur the loss of their properties by abandonment, shall not have the right to take from the houses that have been theirs none of their appurtenances—that is to say, roofs, doors, and windows; but those who next occupy them are obligated to pay him the just amount of

their value in the same prices, kind, and other payment upon which they shall agree."

Therefore I ordered it published, circulated, and duly complied with.

Palace of the Government, in Santa Fe, July 20, 1837.

ALBINA PEREZ.

JESUS MA. ALARID,
Secretary.

And that it may come to the notice of all, and may be given the most exact and punctual observance, I order that it be published by proclamation in this capital and in the other towns and places of the district.

Given in Santa Fe, July 28, 1837.

RAMON ABREU [RUBRIC].

The first article of this law is but a reiteration of the Spanish law—that land vacant and abandoned was subject to be regranted to others, unless at the time possession was given the owner appeared and objected.

This law is equivalent to the resumption by the Mexican Government of all lands abandoned by the owners.

Abandonment is largely a question of intent. The facts disclosed by this record clearly show abandonment, *at least*, about the time of the promulgation of the foregoing law (1837), and no attempt was ever made by any of the Leybas to resume possession under either Mexico or the United States.

They are presumably chargeable with knowledge of such law, with knowledge of the cession to the United

States, with knowledge of the provision of law provided by the United States for their protection; hence the acquisition and establishing of adverse rights of great value raises the *conclusive presumption of law* that the original intention was to abandon, and the property so passed to the United States has been so treated for a half century, and claimant should now be estopped to assert the contrary.

V.

The claim should be rejected for insufficiency of proof of boundaries.

The familiar principle of law controlling this as well as other land claims is of course that there must be such proof of boundaries as will with reasonable certainty define and limit the thing claimed, differentiating it from other things of the same kind.

United States v. *Delespine* (15 Pet., 319).
United States v. *King* (3 How., 773).
Aribaca Land and Cattle Co. v. *United States* (184 U. S., 649, 652).

It is respectfully submitted that such proof has not been presented here. The only boundary proved by claimant with any suggestion of certainty is the San Marcos road, a boundary that could serve equally well at any other point along its length of 15 or 20 miles, standing as it does at the limits of the city of Santa Fe, 15 miles north of the tract claimed, and ending at the San Marcos Spring, which is a mile or two south of the tract claimed. The San Marcos road therefore

does not fix the location. Do the other boundaries fix it? The boundary named in the title papers on the north is "the lands of Capt. Sebastian de Vargas." Where these lands are has been the subject of much speculation for years past, but all of the conflicting theories on the subject, including that now urged by claimant, were finally submitted to the Court of Private Land Claims, and that court held that the lands of De Vargas were located entirely east of the road known as the Camino de en Medio, which the proof shows to be miles east of the tract here claimed.

Archive No. 640 (R., 177) shows that Sebastian de Vargas owned other lands south of Santa Fe as early as 1710, and a mere reference to lands of Capt. Sebastian de Vargas without showing their location furnishes no guide for decision.

Even if this were a claim otherwise entitled to confirmation, the court would be confronted at the very outset by the lack of a definite identification of a north boundary, and that fact would preclude a confirmation upon the familiar principle stated at the outset; but the lack of satisfactory evidence as to the lands of De Vargas is not all. The titles call for the lands of Juan Garcia de las Rivas as the west boundary. An archive introduced by claimant shows that a man named Miguel Garcia de las Rivas, the father of Juan Garcia de las Rivas, owned a piece of land somewhere west of this tract, known as the old Pueblo of La Cienega. That document states nothing about the boundaries of that tract. Assuming that these lands

descended to Juan Garcia from his father and thus come within the description of this grant document as to ownership, the fact still remains that there is absolutely nothing to show what is the east boundary of the sitio or tract called in 1701 the old Pueblo of La Cienega.

Archive No. 313 (R., 176) shows that Juan Garcia de la Rivas had acquired lands just south of Santa Fe as early as 1716. They are not near the Coyote Spring tract, and it all goes to more conclusively demonstrate the lack of any evidence from which the court can identify the lands to which it can say the legal title passed either under the Spanish or Mexican governments.

Unless this court is to indulge in utter conjecture on the subject, it must hold that claimant has wholly failed to establish his west as well as his north boundary. The title papers on the south call for the arroyo called the Arroyo del Oregano. Where is this natural object? Can anyone take the testimony as contained in this record and locate that object? The only two witnesses who attempted to establish the location of this natural object are R. B. Willison and Antonio José Campos, whose testimony has been above outlined. Willison fixes this natural object as an insignificant arroyo not more than a mile long, located eastward from the Coyote Spring and emptying into the arroyo in which that spring is located, a short distance east of that spring, thus leaving no part of the arroyo west of the spring. Campos, who was the

star witness for claimant, on the other hand, fixes the location of this arroyo about a mile and a half *southwest* of the Coyote Spring. This being all of the testimony locating this arroyo, what would a deputy surveyor do going out to locate that arroyo under the evidence? Would he locate it east of the spring, as Willison states, or a mile or more southwest of the spring, as Campos states? And if the proof is so irreconcilable as to make it impracticable to locate that arroyo by survey on the ground, how is this court to locate it upon the proofs? It is respectfully insisted that the record is radically defective in failing to afford the court data from which it can fix the boundaries of this claim. The sole intent of claimant seemed to be to make a location that would include the turquoise mines, and in rushing to the much-desired conclusion he has failed to produce proof to sustain that conclusion. It is this desire to attain an end without putting claimant to the trouble of establishing the intermediate steps that has betrayed him in this case to the absurdity of a claim for 18,000 acres upon title papers designed to contain half a fanega of corn-planting land, or about 4 acres. This discrepancy is illustrative of the results which follow an attempt to locate a grant without data as to its boundaries, and with only a single purpose, and that, the inclusion of a certain property of value. This discussion of the uncertainty of the boundaries has proceeded upon claimant's proofs alone. When it is recalled that, according to the

testimony of the Government witnesses, the lands of Juan Garcia de las Rivas, and the lands of Sebastian de Vargas, and the Arroyo del Oregano have never been known in that locality, within the memory of these oldest men of the community or by tradition, the conclusion becomes irresistible that the location sought by claimant is, to say the least, not sustained by the weight of the testimony required by the act of March 3, 1891.

The will of Simeon de Leyba and the deed from Salvador Antonio Leyba to Juan Angel Leyba, of the Coyote Spring ranch, if competent for the purpose of showing their claim of the general *locus* of the Leyba grant, does not aid in determining the north, west, or south boundaries. They are as uncertain and problematical now as they were before the case was tried. If the grant was complete and perfect at the date of the treaty, it must identify some particular land which had been definitely *segregated*, otherwise it must fail for want of an identified tract upon which to operate.

VI.

The objection urged to the refusal of the court to suppress the depositions of Susano Leyba and others, the witnesses being in attendance at the trial, in no manner prejudiced the appellant's cause and did not deprive his counsel of the opportunity to call each of them for cross-examination, if he had so desired.

Indeed, the motion made by counsel (R., 36) to require the Government to produce the witnesses whose

depositions had been read, for the purpose of cross-examination, "it having been shown that they are actually in attendance on the court" (R., 134–135), was fairly met by the court.

While declining to compel the Government to call these witnesses for cross-examination, the court clearly notified counsel that if the witnesses were in attendance, he might call them himself for cross-examination or any other purpose which he might deem advisable.

If the witnesses were not in attendance, the process of the court was not refused to bring them in, in order that he might subject them to cross-examination. In fact, counsel studiously avoided asking for process, and declined to call a single one of them (although in attendance) for the purpose of cross-examination.

This manner of attempting to make error, and complaining of the denial of rights prejudicial to his client's case, scarcely appeals to the indulgence of an appellate tribunal dealing with a record according to justice and right.

The notable liberality of the Court of Private Land Claims in the reception of evidence, and the total absence of technical or captious rulings upon objections of every kind, disarms this studied attempt to make reversible error.

The depositions were taken before one of the justices upon proper application and due notice to appellant's counsel, and if he desired to cross-examine these witnesses, it was simple enough to call them and ask permission to cross-examine, which would, no doubt, have

been granted. At least he should have made the attempt.

The proceedings and practice before that court have been of necessity liberal, and the manner of obtaining and receiving evidence by deposition could not be governed by such rules and limitations as required by sections 865 and 866, Revised Statutes, United States.

The private land claim act of March 3, 1891, provides, section 7: "That all proceedings subsequent to the filing of said petition shall be conducted as near as may be according to the practice of courts of equity of the United States, except that the answer of the attorney of the United States shall not be required to be verified by his oath, and except that, as far as practicable, testimony shall be taken in open court or before one of the justices thereof."

These depositions were taken before Mr. Justice Stone and complied with the letter and spirit of the act, and there was no occasion for repetition.

If counsel desired to submit the witnesses to cross-examination, he should have called them and asked permission to cross-examine. Having studiously avoided this course, he should not now be heard in complaint.

In conclusion, this claim seems to be brutally speculative, without a single equity appealing to the sympathy or conscience of the chancellor, and which in each feature and characteristic shocks every idea of right when dealing, "*according to justice and right*," with public or private rights of property; and it is submitted

that the decree should be affirmed or reversed and remanded with direction to dismiss the petition for failure, on the part of Sena, to sustain his claim as a perfect grant by a preponderance of the evidence.

Respectfully submitted.

JOHN K. RICHARDS,
Solicitor-General.

MATTHEW G. REYNOLDS,
Special Assistant to the Attorney-General.

WILLIAM H. POPE,
Special Assistant to the Attorney-General.

EDWARD L. BARTLETT,
Of Counsel for American Turquoise Company and John T. McNulty.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1902.

No. 40.

IN EQUITY.

MARIANO F. SENA, PETITIONER AND APPELLANT,

vs.

THE UNITED STATES, ET AL., DEFENDANTS.

On Appeal from the Court of Private Land Claims.

JAMES W. VROOM,
Attorney of the Defendant,
L. Bradford Prince.

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THE UNITED STATES, ET AL., DEFENDANTS.

On Appeal from the Court of Private Land Claims.

This brief is filed on behalf of the defendant L. Bradford Prince, and for the purpose of raising the question of the jurisdiction of the Court of Private Land Claims to adjudicate the grant to Jose de Leyva here in question.

STATEMENT OF THE CASE.

This is an appeal from the final decree of the Court of Private Land Claims in the matter of the petition for the confirmation to the legal representa-

tives of Jose de Leyva of a grant of land located in the territory of New Mexico made to the latter in the year 1728.

The court below decided that the grant was an imperfect grant; that the petition for confirmation had not been filed within the time limited by the statute creating the court; and that therefore the grant was barred, and dismissed the suit for want of jurisdiction.

The translation of the original grant papers will be found on page 112 of the record. These consist of the petition, the grant by the governor, and the paper of juridical possession. A sketch map of the grant will be found at page 2.

These papers constitute the protocol, or original papers, of grant; they were produced from the archives of the United States surveyor general's office of New Mexico, and were admitted in evidence by the court below.

The attorney for the United States objected to the admission of these papers in evidence, because they were the protocol and not the testimonio, the original and not the copy of the grant. (Record, 11.)

Notwithstanding the reception in evidence by the court below of the protocol of the grant to Leyva, the attorney for the United States undertook to prove that no such grant had existed by introducing the testimony of a number of aged residents of the vicinage, who testified that they knew of no such grant, and had never heard of it from any person.

One specimen of this character of testimony, that of Nazario Gonzales, will, I conceive, be all sufficient.

He testifies as follows: (Record, 136.)

> "Q. Since you have been living down there at Cienega, during these forty or fifty years, have you ever heard in that vicinity of a grant called the Jose de Leyva grant? A. No, sir.
>
> "Q. Have you ever heard any one down there, or anywhere else, claiming a grant called the Jose de Leyva grant? A. Never; not to my own knowledge, nor by tradition, have I ever heard about this."

Under the Spanish law property may be acquired by immemorial prescription, which is proved by witnesses of good fame or character, who depose to having seen the person in possession of the thing or property for forty years, and having heard their ancestors say that they never saw nor heard anything to the contrary (2 White's Recop., 83); but there is no rule of law, either civil or common, by which a grant of land, accompanied by the delivery of juridical possession of the land granted, could be questioned, much less destroyed, by the testimony of aged witnesses, even of Methuselah's longevity, that they did not know of such a grant, nor had they ever heard of it in the vicinity. Such a rule of law can not be found in either Starkie, Phillips or Greenleaf, nor in Lieber or Bentham; it may possibly be found in Horace Walpole's Historic Doubts on Richard the Third, or more probably in Archbishop Wateley's Historic Doubts as to the Existence of Napoleon—but these works are not in [redacted] law library.

The introduction on behalf of the government of such testimony in the case of a grant of land in ceded territory, to which, as this court has said, the United States made no pretense of ownership, might have been treated with gentle tolerance, and attributed to the zeal of the attorney to "save" to the United States this land which had been granted by Spain in 1728, or left to the rebuttal which the attorney for the appellant saw fit to introduce; but when the court below not only admitted such testimony, but in part based its decision rejecting this grant upon it, saying that

> "the evidence as to * * * claim of ownership, notoriety of the grant, and knowledge of its existence in the community by the oldest inhabitants now living is so vague, contradictory, and uncertain as to be almost wholly wanting" (Record, 240),

the whole proceeding becomes so astounding in its violation of the settled rules of law that it may be properly and fitly characterized, with all due respect to the court below, in the language of Lord Tennyson, as

> "Ruining along the illimitable inane."

The last will and testament of Simon de Leyva, the son of the original grantee, was executed in the ranch house on this grant October 15, 1783. It was discovered in the archives of New Mexico after the hearing below, and was allowed to be put in evidence by the order of this court. By it Simon devises the

grant made to his father in 1728 to his only child, Salvador Antonio, reciting the boundaries of the grant substantially as they are given in the original petition.

The west boundary of the grant is given in the original petition as "the lands of Juan Garcia de las Rivas," which are shown on the map of the grant facing page 2 of the record, but which are omitted from the map offered in evidence by the government found facing page 162.

The attorney for the United States, on the hearing below, assumed that the west boundary of this grant to Leyva was not what the protocol of the grant stated it to be, but that it was the road to Galisteo. Having presumed this boundary, the whole power of the government was employed to attempt to demonstrate that that road ran as located on the map offered by it, and not as located on the map produced by the petitioner; that is, to the east, and not to the west of the *Cerrito Palado.*

When the United States, as already said, made no pretense to ownership of these grants of land acquired by treaty of cession, when they were in question before a tribunal in which it consented to be made a party, the solicitude of the attorney for the government to create a west boundary for this grant other than that granted by the king of Spain one hundred and seventy-two years ago, as was proven by the protocol of the grant in evidence before the court, is inexplicable. Nor does the fact that this purely imaginary west boundary, as attempted to be created by the government, excludes from the grant to Leyva the *Cerrito Palado*, the hill which contains the tur-

quoise mines so long and so profitably exploited, without title, by the American Turquoise Company, afford any explanation of the circumstance.

It does not seem to me, however, that the question of boundary is for consideration on this hearing. The sole question is, whether the grant to Leyva was perfect or imperfect. And to this I ask leave to add one other, Whether the Court of Private Land Claims had jurisdiction over the grant in either case?

Before considering, however, the question of the jurisdiction of the court below, it will be necessary for me to briefly consider the nature and character of the grant to Leyva.

BRIEF AND ARGUMENT.

I. The grant to Jose de Leyva was a perfect grant

First—By the grant.

Second—By prescription.

The grant to Jose de Leyva of a tract of land, located in what is now Santa Fe county, in the Territory of New Mexico, was made in the year 1728 by Bustamente, the then governor of the Province of New Mexico, juridical possession having been given on May 25 of that year.

The governor of that province had, in 1728, the power to make grants of land within his jurisdiction on such considerations as seemed to him best, and, in so doing, to confer a perfect title. From its exercise the court will presume the power, and cast the burden

of proof upon the party denying it to show that the power had been transcended.

Strother vs. Lucas, 12 Pet., 410-437.

The governors of New Mexico were appointed by the king of Spain for a term of five years (Bancroft's New Mex., 242-256-268); they were not appointed by the viceroys of Mexico, consequently they were the *alter ego* of the king and not sub-delegates of a delegate. Their acts were the acts of the king and alone subject to his sanction or disapproval.

The governor having made the grant to Leyva, and juridical possession having been given to the grantee, it, in 1728, required no confirmation at his hands or at those of the king. The title became complete and perfect by the act of grant, and the grantee acquired all the title the king could give.

Menard's Heirs vs. Massey, 8 How., 293-303.

Farther it appears by the preamble to the Royal Regulations of October 15, 1754 (2 White's Recopilacion, 62; Reynold's Compilation, 50), that by a decree of November 24, 1735, the king ordered that grants *thereafter* made in New Spain were to be forwarded to him for confirmation. The cost and inconvenience, however, of such procedure was found to be so great that it was abrogated by those regulations, and the power of making grants of land in the provinces was restored to the various officers who had theretofore exercised it. From these considerations also it is proven that in 1728, when this grant to Leyva was made, the governor having the power to

make grants of the public domain, a confirmation by the king was not requisite to perfect the grant title, but that the governor could confer a perfect title by his own grant made in the name of the king.

United States vs. Clarke, 8 Peters, 436-401.
Strother vs. Lucas, 12 Peters, 410-438.

In speaking of grants of land of the character of the one under consideration, the Supreme Court in United States vs. Clarke, supra, on page 150, say:

> "These titles are to be valid to the same extent as if the territory had not been ceded. What is that extent? A grant made by a governor, if authorized to grant land in his province is *prima facie* evidence that his power was not exceeded. The connection between the crown and the government justifies the presumption that he acts according to his orders. Should he disobey them his hopes are blasted, and he exposes himself to punishment. His orders are known to himself and to those from whom they proceed, but may not be known to the world. Such a grant, under a general power, would be considered as valid, even if the power to disavow it existed, until actually disavowed. It can scarcely be doubted, so far as we may reason on general principles, that in a Spanish tribunal a grant, having all the forms and sanctions required by law, not actually annulled by superior authority, would be received as evidence of title."

These rules of construction are strengthened by another consideration. The king of Spain individually was held to be the owner of all the lands of the new world; it was his personal domain (Schmidt, Civil Laws of Spain, 92; Mobile vs. Esclava, 9 Porter (Ala.), 593; affirmed, 16 Pet., 234). From these possessions he derived a large part of his revenues, and the laws promulgated by him were largely framed for the accomplishment of that purpose and for the settlement of the country. It can not be questioned that he was notified of all that was done by his officers in granting his personal domain. This fact, in the absence of proof, would in ordinary cases be presumed. But when the laws of Spain enjoin such information to be given, the comity of nations requires the courts of the United States to conclude that what the laws of a foreign nation prescribed was executed by the officers and tribunals of that country.

In Book 3, Title 14, Law 13, of "*Las Leyes de las Indias*" (2 White's Recop., 40), it is provided:

> "We command the viceroys and presidents on all occasions to transmit to us specific and particular information of all deserving persons who expect rewards for services rendered, * * * with the qualifications and circumstances of each, and of such persons as they may have rewarded, and the motives for doing so."

Again, in Book 4, Title 6, Law 7 (2 White's Recop., 45), it is provided that the viceroys and presidents shall keep a secret register of rewards,

> "where shall be recorded for reference the names of all persons applying, with a summary account of their merits and services, together with what they shall do to reward them, and their motives for the same; all which shall be signed by them, and certified by the secretary of government. Each year they shall transmit to our council a statement of all that they have done in the year."

The king of Spain, therefore, was bound by his knowledge of, and consent to, this grant to Leyva as a perfect grant, made and confirmed by lawful authority, acting under and for him and in his name; and the United States, in acquiring the province of New Mexico by treaty of purchase, became in law equally bound.

While this grant was perfect, it was made subject to one condition, which is expressed in the paper of grant made by the governor, namely:

> "Providing he shall settle it within the time provided by the royal ordinances."

This was a condition subsequent. Such conditions are either expressed in the paper of grant, or they are to be implied from existing laws. It is an elementary principle of law that when the condition is subsequent, that is, to be performed after the estate is vested, the estate shall become absolute in the tenant (2 Blackstone's Com., 156); or, as Chancellor Kent states it:

> "Subsequent conditions are those which operate upon estates already created and vested, and under them liable to be defeated." (4 Kent's Com., 125.)

The fact that this grant contained a condition subsequent embodied in the paper of grant, did not, therefore, affect the estate granted. It was a perfect grant, subject to a defeasance, and such defeasance was only enforceable both at civil and common law by some procedure in the nature of office found.

> "There is no doubt," says the Supreme Court of Texas, in Hancock vs. McKinney, 7 Tex., 384-456, "that in practice under the Spanish law, when grants of land were made upon conditions, if the conditions were not performed, any one might denounce them, prove the forfeiture, and apply and have the lands granted to himself. But then it devolved upon the party denouncing to prove the forfeiture." (2 White's Recop., 278, section 9.)

Judge Field, while sitting as a justice of the Supreme Court of California, says, in Ferris vs. Coover, 10 Cal., 589-615:

> "The object of the decree of 1824 and the regulations of 1828 (of Mexico, which are similar to the laws of Spain, and based upon them) was the settlement of the vacant lands of the republic, and for that purpose grants like the one to Sutter were subject to the con-

ditions of cultivation and occupancy. * * * But it is immaterial whether we consider these conditions as intentionally omitted, or as annexed to the grant by force of the regulations. They are conditions subsequent, for the non-performance of which the estate might have been defeated by proceedings of the government to that end; but until such proceedings were had, and a forfeiture declared thereon, the estate remained in the grantee. Under the Mexican law, as under the common law, an estate granted by the government could not afterwards be devested upon mere allegations or surmises. Some former and regular proceedings were necessary. Under the Mexican law they had their inception in what is termed a denouncement by a party desirous of acquiring the land. When the denouncement was made, an investigation was had whether or not the conditions had been complied with, or so disregarded as to authorize a declaration of forfeiture. No re-grant was made upon mere allegation that the conditions of the former grant had not been performed, without an inquisition as to the fact."

Hornsby vs. United States, 10 Wall., 240.

Farther, the effect of the delivery of juridical possession was to separate the land granted from the pub-

lic domain, and to vest the title absolutely in the grantee against the government.

United States vs. Malarin, 1 Wall., 290.
Graham vs. United States, 4 Wall., 260.
United States vs. Pico, 5 Wall., 536.

The court below did not base its decision on a denouncement and forfeiture of this grant. The burden of proof would then have been upon the government, which did not, and could not, produce evidence to sustain such contention. The court, instead, decided that the grant became imperfect because of an alleged and suppositious breach of conditions, which it professed to find in the Royal Regulations of 1754. The construction of these regulations will later be fully treated, and need not be here considered.

The condition subsequent embodied in this grant to Leyva was, as we have seen, that of lawful "settlement." Juridical possession of the land granted having been delivered to Leyva on May 25, 1728, settlement will be presumed until the contrary is shown, and the burden of proof to establish the breach of a condition subsequent is upon the party alleging it. (Per Hemphill, C. J., in Hancock vs. McKinney, 7 Tex., 384-459.)

Four years' settlement would give the grantee what is termed at common law an absolute, fee simple title. (2 White's Recop., 43.) The power was thenceforth conferred upon the grantee to sell and make use of the land freely, at his will, as a thing of his own. (2 White's Recop., 283.)

It will appear, on examining the opinion of the court below, that in deciding this grant to have become imperfect in 1754, it became necessary for the

court to admit that the grantee, or his legal representative, was, in that year, in possession of the lands granted in 1728. Hence, we have an admitted possession of the lands granted to Leyva not of four but of twenty-six years; a possession by a perfect title which could not be aided nor destroyed by an act of the king of Spain or the republic of Mexico, or by that of the United States, as their successor.

From the admitted fact of this possession, it appears that,

Second, the grant to Leyva was a perfect grant by prescription.

The doctrine of prescription under the laws of Spain has but little analogy to the limitation upon civil remedy at common law, embodied by the legislative power in statutes, termed statutes of limitation. Nor is it analogous to the prescription of incorporeal hereditaments, which the common law recognizes where title is acquired by immemorial or long continued enjoyment; although the seigniory, or dominion, of cities, towns, and civil and criminal jurisdiction could be thus acquired against the king by a possession of forty years.

The law of Toro provides, that "the time in which things are prescribed is comprehended under two kinds of prescription—immemorial and temporal. The first is proved by witnesses of good fame, or character, who depose to having seen the person in the possession of the thing or property for forty years, and having heard their ancestors say they never saw or heard anything to the contrary." (1 White's Recop., 95.)

It would seem, strictly speaking, that the rule of immemorial possession was by the civil law alone applied to municipal titles and rights, such as the seigniory of cities and towns, and civil and criminal jurisdiction, though it would seem to have been applied by the Supreme Court of Texas to ordinary grants of land. A royal decree concerning crown lands was promulgated July 16, 1819, by which it was provided, "Second, In the absence of other title, a just prescription, that is a possession of forty years, duly proved according to law, shall be admitted and respected." But this decree seems, from its language, to have been limited to the island of Cuba. (2 White's Recop., 502-550.) However, the doctrine and the mode of proof can have no application to the grant under consideration, in which the grant and the juridical possession of the land granted are, by the court below, admitted to have been proved by the production from the proper archives of the protocol, or original papers of grant.

Prescription or usucaption, according to the civil law as embodied in the laws of Spain, was a civil mode of acquiring dominion and ownership of anything by having possession of it during the whole time that the law directs. The requisites to prescription are five: First, just title; second, good faith; third, continued possession; fourth, the time fixed by law, and fifth, that they be not vicious; that is, that there be no impediment to its being prescribed (2 White's Recop., 733).

All of these requisites are found united in the grant to Leyva.

We farther find that under the Spanish law (Ib., 734) "things moveable are prescribed by three

years; real by ten between present, and twenty between absent persons."

The law of prescription applied to the king as well as to the subject. He was, as we have seen, regarded as the personal owner of all the lands of New Spain. The maxim of *nullum tempus occurrit regi* had no application to him. It was of feudal origin, which system was never introduced into Spain, hence the maxim can not be applicable in the consideration of Spanish grants, and in their construction the courts will apply the laws and customs of Spain, not the rules and maxims of the common law.

United States vs. Arredondo, 6 Pet., 714.
Buyck vs. United States, 15 Pet., 215.
United States vs. Aguisola, 1 Wall., 352.

The rationale of the English maxim will be found in Baldwin's Constitutional Views, 142 (U. S. Rep. Lawyers' Co-op. Ed., supplement to 11 Peters), which will fully illustrate the inapplicability of the maxim to the sovereigns of Spain.

If we regard the king as present in the persons of his governor, his *alter ego*, the time of prescription would be ten; if absent, twenty years. In either event the grantee, Leyva, had acquired by prescription, in 1748, a perfect title, which could be destroyed by neither the king of Spain nor by the United States.

I do not attach much weight to the civil law rules of prescription in the construction of this grant; at most they could but furnish adventitious aids. I have treated of them at some length more for the purpose of demonstrating that a prescription of forty years could have no application to this grant, but was

only applicable to cases of municipal rights, and possibly to cases where a grant was to be presumed, in the absence of grant papers, by proof of long continued and exclusive possession. In the present case, in which the grant papers are produced and received in evidence by the court, the title would be, if necessary, perfected by twenty, if not by ten, years' possession.

But it might be suggested, as was done, we think unadvisedly, in Paschal vs. Perez (7 Tex., 348-370), that the Royal Regulations of 1754 prescribed in its fourth section a rule of prescription of fifty-four years, applicable to grants made in New Spain after the year 1700. An examination, however, of this provision will show that the rule is alone applicable to grants of land made "before the year 1700," and to cases in which "persons have not warrants, their long possession shall be held as a title by prescription."

But if any considerations could arise as to the duration of the possession of the land granted in 1728 to Leyva, by which the title to this grant could be injuriously questioned, they are resolved by the opinion of the court below, in which it, in laying the foundation for the rejection of the title to this grant, was compelled to decide that the grantee was in possession of the land granted in 1754, the date of the Royal Regulations, when this perfect grant was imagined by the court to have been transmuted, after a possession of twenty-six years, into an imperfect one.

The Court of Private Land Claims did not decide that the grant to Leyva was, when made in 1728, an imperfect grant; it did not decide that the grant had at any time been abandoned; it did not decide

that the land granted had become revested in the king of Spain or the republic of Mexico; it did not decide that the grant had been denounced, forfeited and re-granted under the provisions of the Royal Regulations of 1754; it baldly decided that the grant became imperfect because of an alleged, supposititious and unproved failure to comply with those regulations.

From the opinion of the court below it is, therefore, most clearly and incontestably established, that a grant of land was made to Leyva in 1728; that juridical possession thereof was at that time given to him; that the grantee, or his legal representative, was in lawful possession of the land so granted in 1754, and presumptively continued in possession thereof, under some title, at the time of the filing of the petition in the Court of Private Land Claims, and at the date of the final decree in April, 1900. Altogether, a possession of one hundred and seventy-two years, one hundred and twenty of which was under Spain and Mexico, and fifty-two years under the government of the United States. Notwithstanding these facts, admitted by the court below in its opinion, the court decided that the grant become imperfect in 1754, and so continued until 1848, when the territory was ceded to the United States, a peaceable, continuous, unquestioned possession under Spain and Mexico of ninety-four years, under a title that was and remained imperfect. The court evidently held that to this grant the law of prescription could never apply.

II. The grant to Leyva was perfect when the land was granted to him, in 1728; it could not, and did not, become imperfect under the provisions of the Royal Regulations of 1754.

The purpose of these Royal Regulations was threefold:

First—To restore to the viceroys, delegates and governors the power to make and confirm grants of land in New Spain, without the approval of the king, as that power had existed prior to the Royal Order of November 24, 1735.

Second—To cause certain of the titles and patents by which grantees held possession of lands under the king to be exhibited to the proper and designated officials, so that the grantees might, when so required by the regulations, be confirmed in their possession.

Third—To deprive and eject grantees from lands occupied by them, if they failed to exhibit their grants or warrants for such possession within the time specified, and to grant such lands to other persons.

These regulations, so far as they related to the investigation of the possession by grantees of lands held under the king, were neither novel nor extraordinary. The king of Spain always exercised the right of requiring persons who held grants from the crown to come forward, at such time and in such manner as he deemed proper, and prove the character and extent of such possession. We find similar regulations in the *Recopilacion de Leyes de las Indias,* which were promulgated by Charles II., in 1682 (2 White's Recop., 52), and we shall see later that the provisions of the Regulations of 1754 in this regard were specifically renewed by the Ordinance of Intendants of 1786.

The former law reads as follows:

> "Whereas, We have inherited fully the dominion of the Indies; and, whereas, the waste lands and soil which were not granted by the kings, our predecessors, or by ourselves, in our name, belong to our patrimony and royal crown, it is expedient that all the land which is held without just and true titles be restored as belonging to us, in order that we may retain"

sufficient lands for granting for various enumerated purposes.

The law continues:

> "For all this we order and command the viceroys, presidents and pretorial audiences, whenever they shall think fit, to appoint a sufficient time for the owners of land to exhibit before them and the ministers of their audiences, whom they shall appoint for that purpose, the titles to lands, estates, huts and cabellerias, who after confirming the possession of such as hold the same by virtue of good and legal titles, or by a just prescription, shall restore to us the remainder, to be disposed of according to our pleasure."

The object of these regulations, as well as those of 1754, was the restoration to the crown of the royal lands, the possession of which was held, not by grantees with a just title, but by persons without warrant or title, so that they might be disposed of by the king;

not as the court below decided respecting the perfect title granted to Leyva, the validating of valid titles, which would have been as idle as gilding refined gold, and as futile as were the efforts of the astronomers of the academy of Lagoda to extract sunshine from cucumbers.

Evidently the court below, disregarding the maxim of the civil law, that property once acquired is lost only by the act of the owner (2 White's Recop., 99), considered property and possession, which jurists in primitive ages confounded, as identical. Property is, however, a right; possession a fact. The Royal Regulations of 1754 dealt alone with the fact of possession. If that was founded upon a just title, the designated officers could neither make nor unmake the royal grant, nor could they add to or subtract from it. The king could not confer upon another a power which he himself could not exercise. If the grant was perfect, it remained so; if the possession rested simply upon the fact of possession and not upon the right of property, such possession, unless perfected by prescription, was subject to denouncement, and the land so occupied was regranted to another. Under these principles of the civil law the Royal Regulations of 1754 are to be construed.

These regulations provided, by article III, for the submission to and examination by delegates of the king, the delegate in New Mexico, as appears by article XII, being the governor, of the evidence of title to the royal lands which had been possessed

> "from the year 1700 till the day of the publication of said order,"

so that the possessors of such lands

> "may prove before the sub-delegate * * * the titles and patents in virtue of which they hold their land. For this exhibition an adequate time shall be fixed, proportioned to the distances; and notice shall be given that they shall be deprived of, and ejected from such lands, and grants of them made to other persons if they failed to exhibit their warrants within the limited time, without just and proper cause."

It was further provided, by article IV, that on the warrants of those whose grants were made prior to the year 1700,

> "it shall be noted that the persons have complied with the obligations of exhibiting them, so that they may not in the future be disturbed in or sued for their royal lands, they nor their successors."

No such provision was made for grants made subsequent to 1700, and it will be seen by article X that none were contemplated. This latter article has no application to the province of New Mexico, in so far as the reports to be made to the audiencias. The governor made no such reports.

From these requirements to exhibit muniments of title to warrant the possession of the royal lands, one class was exempted by article V, namely:

> "The holders of land sold or adjusted by the several deputies from the year 1700

> up to the present time shall not be molested, interfered with, nor denounced, now, nor at any time, if it appears that they have been confirmed by my royal person, or by the Viceroys and Presidents of the Audiences of the several districts, in the time when this requirement was in force; but those who hold them without this necessary requisite shall apply for the confirmation thereof to the Audiences in their district or to the other officers to whom the power is given by these new instructions." (Reynold's Comp., 53.)

These regulations do not specify how the fact that the grant had theretofore been confirmed was to be ascertained; but it was ascertainable from the archives of the government in which the protocol, or original paper of grant, was by law to be deposited. (Farmer's Heirs vs. Esclava, 11 Ala., 1028; approved, 9 How., 421.) That the protocol was in this case so deposited appears from the opinion of the court below, in which it is said: "The title papers and documents produced from the archives of the surveyor general's office, and received in evidence in this case," etc. This having been the fact, there was no necessity for the grantee to produce the testimonio, or copy of the grant, which had been given to him by the government as evidence of title. The fact that the possession of the grantee, which alone, under the regulations, was in question, needed no confirmation, was ascertainable, and presumptively ascertained, from the government archives. This presumption of

law is sustained by the continued and uninterrupted possession of the grantee, and from the fact that the United States could, on the hearing below, produce no evidence that Leyva's possession had been "molested, interfered with, nor denounced," which was expressly forbidden by the provisions of the same article in the case of perfect grants.

We find from the decision of the court below that Leyva was in possession of this grant in 1754, and, presumptively, his legal representatives so continued until the entering of the final decree by the court in 1900. Simon de Leyva, the son of the original grantee, by his last will and testament, dated October 15, 1783, devised this grant of land to his only son and sole heir, Salvador Antonio.

This will was not introduced on the hearing before the Court of Private Land Claims, not having been until afterwards discovered in the archives at Santa Fe, New Mexico. Application was, however, made to the United States Supreme Court, under section 9 of the act entitled "An act to establish a court of private land claims and to provide for the settlement of private land claims in certain States and Territories," approved March 3, 1891 (26 Stat., 854), for leave to take additional testimony. In denying the motion, the court decided that a certified copy of the will of Simon de Leyva might be introduced at the hearing.

The following are extracts from this will:

> "Finding myself at my ranch (which was on this grant) far from my house (in Santa Fe), and having received a mortal

blow from an unbroken mule, and believing myself unable to survive, nor my body to be moved, I command and order before dying my last will of my testament be made, that all may see it in the following form, towit:

* * *

"Item: I declare that I have been married and nuptially blessed according to the rules of our Holy Mother Church with Feliciana Gonzales, already deceased some years, in which marriage we procreated one son, Salvador Antonio, whom I recognize as my sole heir. * * *

"Item: I declare that I have a grant of lands given by the king of Spain to my deceased father, Jose de Leyva, in 1728, and its boundaries are as follows:

"On the south the slope (*cuesta*) called the Arroya of the Oregano; on the north the road which goes towards Pecos from Los Cerrillos, or lands of Captain de Vargas; on the east with the road which goes from Santa Fe to the spring of San Marcos; on the west with the lands of the old Pueblo of La Cienega, as appears by the original papers which are to be found in the trunk in my residence in Santa Fe.

"On said grant there is constructed a ranch at the Coyote spring, a small house, two rooms and a small kitchen; a little tower (*torreon*); a large corral of poles; two corrals for young animals; a corn crib, not very large, with corn and beans; a hut (*jacal*) in

the temporal lands. There is at my ranch my farming tools, six plows, two axes, two hoes, six yokes, three ox goads, one loom, one spinning wheel, three skeins of silk, two wool cards, one adze, four pairs of yoke straps, one riding saddle complete."

This testament establishes beyond controversy the lawful and continuous possession in Leyva and his son of the land granted from 1728 to 1783, a period of fifty-five years—twenty-nine years of which were after the date of the Royal Regulations of 1754, at which time the court below decided the grant became transmuted into an imperfect grant. It is in itself an answer to all the objections to the grant as a perfect one advanced by the court below in its opinion.

Let us now examine in detail the decision of the court below respecting the character of this grant, and the construction placed by the court upon the Royal Regulations of 1754 as affecting the grant.

The court say:

"The title papers and documents, produced from the archives in the surveyor general's office, and received in evidence, show that the grant in question was made to Jose de Leyva by the governor and captain general, Bustamente, in the name of the king of Spain, in the year 1728; and that juridical possession was formally given to the grantee of the land petitioned for and granted."

From this it appears that the title papers were:

First—Produced from the proper archive.

Second—That they were received in evidence by the court as proof that a grant of this land had been made to Leyva, and juridical possession thereof given to him.

Thus the requirements of the statute creating the Court of Private Land Claims relating to proof of title, as construed by the Supreme Court in United States vs. Ortiz, 176 U. S., 425, were complied with.

From the grant papers which were thus received in evidence it must be presumed, as we have already shown,

First—That the governor had the power to make the grant.

Strother vs. Lucas, 12 Pet., 410-437.

Second—That upon the giving of juridicial possession the grant became complete and perfect, and the grantee acquired all the title the king could give.

Menard's Heirs vs. Massey, 8 How., 293-303.

Notwithstanding these facts, and the presumption of law flowing from them, they are disregarded by the court below, which, in its opinion, continues:

"The evidence as to settlement and occupation of the tract purporting to have been

> granted, continuity of possession, cultivation, residence, improvement, claim of ownership, notoriety of the grant, and knowledge of its existence in the community, or by the oldest inhabitant now living, is so vague, contradictory and uncertain as to be almost wholly wanting."

This paragraph, which the learned judge, farther on in his opinion, characterizes as "the state of facts presented," would seem to indicate that the court below had misapprehended, or, at least, misconstrued, the rules of property under the laws of Spain.

If those laws required of the grantees of the royal lands

> "settlement and occupation of the tract purporting to have been granted, continuity of possession, residence, improvement,"

and the court nowhere indicates any law embodying these requirements—the general reference to the whole body of the Spanish law being inconclusive, then these requirements were, of necessity, conditions subsequent, which were to be , and could only have been performed, after the estate had vested. They did not affect the estate granted, though the non-fulfillment of them might afford ground for forfeiture.

If the United States alleged that these conditions subsequent had not been performed, and that thereby the grant had been forfeited, or become "imperfect,"

as the court decides, the burden of proof was upon the government to prove the facts alleged.

Hancock vs. McKinney, 7 Tex., 384-456.
Ferris vs. Coover, 10 Cal., 589-615.

The Court of Private Land Claims, however, attempted to shift the burden of proof upon the grant claimants. The learned judge who delivered the opinion of the court says:

> "The evidence as to settlement and occupation, continuity of possession, etc., * * * is so vague, contradictory and uncertain as to be almost wholly wanting."

The rule of law, however, in such cases was correctly stated by Hemphill, C. J., in Hancock vs. McKinney (7 Tex., 384-459), in which he says:

> "As to the burthen of proof, when the title is attacked or lands denounced for want of performance of conditions, I apprehend that would depend upon the character of the conditions. If they be precedent, the party who sets up the title must show performance; if subsequent, the onus rests upon the party alleging the failure."

But, assuming, as the court below does, that the burden of proof was upon the grant claimant—"settlement and occupation" were proved on the hearing by the paper of juridicial possession, which the court admitted in evidence; "settlement and occupation * * * continuity of possession," by the admission

of the court that the grantee was in possession of the land granted in 1754, when by the royal regulation of that year the grant became "imperfect," and by the will of Simon de Leyva, the son of the original grantee, made October 15, 1783. Further "continuity of possession, cultivation, residence, improvement" need not be proved by the grantee when there was, as in this case, a possession evidenced by the papers of grant. In Ferris vs. Coover (10 Cal., 589-631), the court, in construing the laws of Spain and Mexico, says:

> "When there is a title, to preserve it there need be no continuance of possession, and the abandonment of the latter can not affect the rights held by the former."

See also

2 White's Recop., 283, "sixth."

In answer to the objection made to a grant in Florida, that there was no proof of cultivation, the Supreme Court in United States vs. Morant (123 U. S., 335-341), says:

> "As to not cultivating the land, it was proved conclusively on the trial that the grantees actually built houses and resided upon it shortly after the date of the grant."

This was held sufficient proof. In this case it is now proven by the will of Simon de Leyva, that in 1783, fifty-five years after the grant was made to his father, he was occupying and cultivating the land,

that there had been built thereon corralls and a house, and that he died in the latter in that year.

The court below entirely ignores the legal effect and operation of the delivery of juridical possession of the land granted under the laws of Spain. We have already shown from the decisions of the Supreme Court that the effect of such delivery was to separate the land granted from the public domain, and to vest the title absolutely in the grantee against the government.

Possession under the Spanish law is defined in the *Manual del Abogado Americano*, as quoted in 2 White's Recop., 734.

> "Eighth. Possession is the legal holding or enjoyment of a thing with the intention of excluding others from using it. It is divided into natural and civil. Natural is that which one has corporally by himself, as when he is in his house, or inheritance; civil, that which one has by disposition of the law when he goes out of his house or inheritance, not with the intention of divesting himself of the possession of it, but because he can not always be in it.
>
> "Ninth. Every man of sound mind may gain possession by himself, by his son, whom he may have under his control, and by his attorney.
>
> "Tenth. In order to acquire possession two things are requisite; first, the intention of gaining it; and, secondly, the entering into it corporally by one of the modes of delivery

which we explained in No. 11 of the preceding title."

Possession is the foundation of every title, and whatever its origin or the nature of the evidence of title, it all depends on some antecedent possession.

> "Undoubtedly, if a person be found in possession of land, claiming it as his own in fee, it is prima facie evidence of his ownership and seizin of the inheritance."
>
> Ricard vs. Williams, 7 Wheat., 106.

Possession is presumptive evidence of seizin in fee until the contrary is shown.

> Jones vs. Bland, 112 Pa., St., 181.

In any possessory action, proof of prior possession is sufficient against a mere intruder who fails to show a better title in himself. Such an intruder, in order to prevail against a suit founded on a prior actual possession, must assume the burden of proof and by his proof overcome the presumption of law attending the plaintiff.

> Christy vs. Scott, 14 How., 282.
> Fuller vs. Fletcher, 44 Fed., 34.
> S. C., 120 U. S., 534.
> Sharon vs. Tucker, 144 U. S., 533.

The same principal of law which protects a possession from intrusion by a trespassing individual protects it against capricious intrusion by the gov-

ernment. Neither the government nor any individual can, without proof and arbitrarily, deprive a citizen of either a chattel or a field in his possession.

Sedg. & Wait, on Trial of Title to Land, Sec. 192.

> "By common law the king has no right of entry on land which is not common to his subjects—the king is put to his inquest of office, or information of intrusion in all cases where a subject is put to his action; their right is the same, though the king has more convenient remedies in enforcing his. If the king has no original right of possession to the land, he can not acquire it without office found so as to annex it to his domain. Such, too, seems to be the law of Spain, in the Floridas and Cuba, as appears in the case of Arredondo," etc.

Mitchell vs. United States, 9 Pet., 72.

But the court below has another, and a portentiously grave objection to the confirmation of this grant as a perfect grant. In its opinion it says that the petitioner produced no evidence of

> "claim of ownership, notoriety of the grant, and knowledge of its existence in the community or by the oldest inhabitants."

Now as to proving or defeating a grant of land by the production or non-production of evidence of such character under any circumstances, and especially

in this case in which the court had admitted in evidence the protocol of grant made in 1728, produced from the archives of the government, no court in Christendom, nor even a court of *pied poudre,* which Blackstone tells us was the [illegible] of all courts, until the advent of the Court of Private Land Claims, has presumed to promulgate such a rule of evidence and proof.

How wise was the dictum of Lord Halifax which he applied to the honest, incorruptible judges of the Court of Kings bench under the last Stuarts,

> "If it is true that the wisest men make laws, it is as true that the strongest do oft interpret them."

But to seriously consider these alleged rules of proof of title, and with the further purpose of demonstrating that the Court of Private Land Claims, in this particular, also, has misconstrued the laws of Spain, we shall quote from the opinion of Saavedra, the auditor of war, to the governor of Florida, which was approved by the latter as a correct exposition of the laws under which title to the royal lands was acquired in the colonies of Spain. This opinion has been cited with approval in United States vs. Wiggins, 14 Pet., 251, and in United States vs. Delespine, 15 Pet., 333. It is to be found in 2 White's Recop., 283, et seq.

The fourth inquiry propounded was the following:

> "In what situation will those be, who, holding these titles of proprietorship, may

not have complied, or do not continue to comply, with the conditions prescribed by the royal orders respecting the donations of land, the principal object of which has always been cultivation, and under which they have always been granted to them? (2 White, 274.)"

To this inquiry Saavedra responded:

"Those have titles of proprietorship who have complied with the conditions pointed out to entitle them to them, or have obtained them as a remuneration for services or other considerations deemed by the government sufficient for the purpose; in these cases there is a precise obligation to respect such titles."

The fifth inquiry was:

"Have those who are provided with such titles, or others, power to alienate the lands which have been granted to them?"

The reply to this was as follows:

"The 1st law, 12th chapter, 4th book of the Digest of the Laws of the Indies, which treats of the distribution of lands to settlers, says that they having made their dwelling place and tillage, and resided in the settlements four years, the power is granted them from thenceforward to sell and make use of them freely at their will as a thing of their own; consequently, all those who have

merited the title of proprietorship with the useful and direct dominion, are authorized to alienate the lands granted to them."

The sixth inquiry was the following:

"Can these individuals allege any right, who, in virtue of legal titles of proprietorship, took possession of the lands assigned to them, cultivated them for some time, and afterwards left them and suffered them to remain uncultivated, when no cause existed in the province to prevent their returning to them?"

To this inquiry Saavedra replied:

"Those individuals who have taken possession of the lands granted to them, and have acquired the title of proprietorship by the process of time and prescribed conditions, are true proprietors and owners to dispose of the lands as best suits them, although after that they may not have cultivated them, as from the moment they are provided with the title they are exempt from conditions. Those who may have cultivated the lands for some time, and afterwards separated themselves from them, leaving them uncultivated without having obtained the title of proprietorship, shall be subject to the decision of a judicial sentence, in which, after hearing the parties, justice may be done."

The court below, in its opinion, continues:

"Upon consideration of the state of facts presented the court has reached a conclusion which may be briefly stated. The first question arising is, What is the character of this grant, whether perfect or imperfect? It is claimed by petitioner to be a perfect grant, and therefore could be brought into this court at any time, or not at all, under the statute. Inasmuch as this grant was made at the date mentioned, 1728, it falls under the requirements of the Royal Ordinance of 1754, which provides that all grants made subsequent to 1700, unless already confirmed by royal order of the king, or his viceroy, or presidents of the audiencias of the several districts embracing the lands granted, should apply for such confirmation as a *prerequisite to validity*. There is no evidence in this case, either by the documents presented or otherwise, that these requirements of the ordinance of 1754, were ever complied with. Nor is there in the nature of the case or upon any of the facts in evidence any grounds that will justify a presumption of such compliance with the requirement for confirmation. It, therefore, follows that this must be held to be not a perfect but an imperfect grant."

Pascal, in the first of his Provincial Letters, asks whether the five Jansenist propositions condemned by the Sorbonne at Paris are really to be found in the writings of Jansen, and, in showing that they are not,

he satirically observes that mankind have become too skeptical to dispense with the evidence of their eyesight for the existence of visible objects. The age of skepticism has not yet passed, and, with all due deference to the court below, we must decline to accept its decision, that the Royal Regulations of 1754 contain any provision under which this grant must have been presented to the governor of New Mexico for confirmation as a "prerequisite to validity;" or that in default of the grantees proving such presentation and confirmation, the grant became *ipso facto* transmuted from a perfect into an imperfect grant, without first examining for ourselves the provisions of the law.

The fifth article of the Royal Regulations of 1754 in which the court proposes to find these provisions, reads as follows:

> "The holders of land sold or adjusted by the several deputies from the year 1700 up to the present time, shall not be molested, interfered with nor denounced, now, nor at any time, if it appears they have been confirmed by any royal person, or by the viceroys and presidents of the audiences of the several districts *in the time when this requirement was in force;* but those who hold them without this necessary requisite shall apply for the confirmation thereof to the audiences in their district and to the other officers to whom the power is given by these new instructions."

From the preamble to the regulations it appears that prior to the year 1735 the king did not in person

confirm grants of land made in New Spain, so that the power of making and confirming such grants, or in other words of making perfect grants, was vested in the viceroys and governors. We have already shown that the governor of New Mexico was appointed by the king and not by the viceroy of Mexico; hence no confirmation by the latter was requisite to a grant made by the governor, the personal representative of the king. Further, this article specifically limits the requirement for such proof of lawful possession to "the time when this requirement was in force," that is, the time when it was obligatory that grants should be confirmed by the king in person, which in New Mexico was between November 24, 1735, when the Royal Instructions requiring all grants made in New Spain to be forwarded to the king for his approval were promulgated, and October 15, 1754, the date of the Royal Regulations, by which the Royal Instructions were repealed.

Furthermore, the said article provides that grants similar to the one to Leyva, in fact, all those made in New Mexico between 1700 and 1735.

> "shall not be molested, interfered with, nor denounced, now, nor at any time."

The fact that the United States, on the hearing, did not attempt to establish the denouncement and forfeiture of this grant; and that continual and uninterrupted possession of the land granted from 1728 to 1782 was proven by the petitioner, is conclusive proof that the grant to Leyva had not been "molested, interfered with, nor denounced" under the regula-

tions of 1754, and that, therefore, it was a perfect grant and not within the purview of the law.

The court below further finds in these regulations a provision by which a perfect grant title is transmuted into an imperfect one as the penalty for failure to comply with its provisions. That is, if the grantee failed to present his grant for confirmation, it became, if a perfect grant, imperfect; if the grant was imperfect, it so continued; and in either event the grantee, as in the case, remained in possession of the royal lands.

There is no such provision in these regulations, and the court below refrains from indicating in what portion of them it is to be found. The regulations are particular as to the penalty to be imposed for the breach of the law, which by the third article is stated to be that the possessors of the royal lands

> "shall be deprived of and ejected from such lands, and grants of them made to other persons, if they fail to exhibit their warrants within the limited time, without just and proper cause."

Here we have specifically stated the mischief, the remedy and the mode of enforcing the latter—the mischief, the possession of the royal lands without a just title; the remedy, deprivation of and ejection from their lands, and the re-granting of them to another; the mode of procedure, judicial proceedings before designated officers.

In Schulenberg vs. Harriman (21 Wall., 44-63) the Supreme Court say:

"In what manner the reserved right of the grantor for breach of the condition must be asserted so as to restore the estate, depends upon the character of the grant. If it be a private grant, that right must be asserted by entry or its equivalent; if it be a public one, it must be asserted by judicial proceedings authorized by law, the equivalent of an inquest of office at common law, finding the fact of forfeiture and adjudging the restoration of the estate on that ground, or there must be some legislative assertion of ownership of the property, or that it be offered for sale or settlement."

1 White's Recop., 726.

2 Ib., 52, 274-282.

Mitchel vs. United States, 9 Pet., 743.

Galveston vs. Texas, 31 Tex., 596.

Brownsville vs. Basse, 36 Tex., 500.

Ferris vs. Coover, 10 Cal., 589-615.

United States vs. Repentigny, 5 Wall., 211-288.

Hornsby vs. United States, 10 Wall., 240.

The United States, on the hearing, made no attempt to prove the denouncement and forfeiture of this grant under the Royal Regulations of 1754. The court, in its opinion, makes no allusion to such a procedure, the only mode by which the title to Leyva could have been lawfully devested. It is content with the bald statement that the grant

> "must be held to be not a perfect, but an imperfect grant,"

and in the concluding sentence of its opinion gives effect to its decision by saying:

> "And as such imperfect grant it is subject to the provision of the creating, this court requiring the petition for confirmation herein to be filed within two years, but since this case was not brought or filed in this court until the present year, we must hold that it is buried by the statute of limitations, and hence must dismiss the case for want of jurisdiction under the statute."

The court below again attempts to shift the burden of proof from the United States to the petitioner; it alleges the non-compliance with a condition in the nature of a condition subsequent, and then demands that the grantee should prove its fulfillment. In its opinion it says:

> "Nor is there in the nature of the case, or upon any of the facts in evidence, any grounds that will justify a presumption of such compliance with the requirement for confirmation."

The questions at issue in this suit were not whether the grantee justified his possession under the regulations, but whether these required that he should do so; and herein the burden of proof rested upon the United States; not whether he was con-

firmed in the possession of his land, but whether his possession was denounced and forfeited, and the land regranted to another; and, again, the burden of proof was upon the United States, the grantee having retained possession of the land granted, under Spain and Mexico, from 1754 to 1782, and presumptively to this time.

In view of this continued, peaceable, uninterrupted possession, which the court below, in its opinion, wittingly or unwittingly, admits, every intendment and presumption of the law must be, that the requirements of the regulations were complied with by the officers of the kingdom of Spain and by the grantee.

In direct contradiction to the decision of the court below, the Supreme Court says in Gonzales vs. Ross (120 U. S., 605-622):

> "All favorable presumptions will be made against the forfeiture of a grant. As said before, it will be presumed until the contrary be shown, that a public officer acted in accordance with the law and his instructions."

Again, the court says in United States vs. Noe (23 How., 312, affirming United States vs. Kingsbury, 12 Pet., 476):

> "The court will liberally construe the performance of conditions precedent and subsequent in such grants. It has not, nor will it, apply in the construction of such

conditions in such cases the rules of the common law."

The Supreme Court of Texas says in Cavazos vs. Trevino (35 Texas, 133-165):

> "It is fairly to be presumed from the long-continued possession of the appellees, under both the Spanish and Mexican government, disturbed by no action of the political authority, and questioned by no adverse claimant until so late a day, that the grant was in all respects regular and legal."

In Spanish and Mexican grant cases the courts have uniformly presumed that the officers of the former government, who could at least read the laws of the country in the Spanish language, acted in conformity with them. In this suit it must be presumed that the proper officer decided that the grant to Leyva was not within the purview of the regulations of 1754, or, if it was so held to be, that it was by him confirmed. The United States proved no denouncement and forfeiture: the grantee proved continuity of possession. Whatever presumption is entertained, it is binding upon this government.

In Hardiman vs. Herbert (11 Texas, 656-660) the court says:

> "When questions were fairly submitted to the former authorities of the country upon the construction of their laws, we have never undertaken to sit in judgment upon

their action as a revising court authorized to entertain appeals from their actions and adjudications. On the contrary, where questions were thus submitted and decided, we have held their actions and adjudications, as to rights acquired under them, conclusive upon all questions properly within their cognizance, when not affected by any question of intentional fraud, or the unauthorized usurpation of authority."

Holliman vs. Peebles, 1 Texas, 673.
Edward vs. James, 7 Texas, 382.
Cavazos vs. Trevino, 35 Texas, 165.
Halleck's International Law, 112.
Wheaton's International Law, 161.
Wilcox vs. Jackson, 13 Pet., 575.
Elmendorf vs. Taylor, 10 Wheat., 152.

In the last cited case, Chief Justice Marshall, in his usual comprehensive and emphatic language, says:

"No court in the universe which professed to be governed by principle would, we presume, undertake to say that the courts of Great Britain or France, or any other nation, had misunderstood their own statutes, and therefore erect itself into a tribunal to correct such misunderstandings."

The court, in its opinion, further says:

"That this grant must be held to be not a perfect, but an imperfect, grant."

This was the penalty which the court, not the royal regulations of 1754, attached to this grant. The court does not inform us where in the regulations such penalty is prescribed. It does not inform us where, or by what officer, the penalty was imposed, nor the effect of it when imposed. In the imposition of this penalty the statute, in its workings, must have been automatic. Further, as will be shown under the third point, the Court of Private Land Claims has decided that the regulations of 1754 were repealed in 1819, therefore, the power to impose a penalty under its provisions could not thereafter have been exercised by the governor of New Mexico, and much less by the courts of the United States, after the cession of the territory.

The impossibility of this construction of the Royal Regulations becomes manifest if we consider it was an imperfect grant under the laws of Spain.

In Hancock vs. McKinney (7 Tex., 449), the court says:

> "The distinction between a perfect and an imperfect title, by the laws of Spain, has been repeatedly recognized by this court; and what constituted an imperfect title was fully considered and determined in the case recently decided, of Paschal vs. Perez (Ib., 368), where the court says: 'An imperfect title is one which requires a further act of the granting power to pass the fee in the lands, which does not convey full and absolute dominion, not only against all private persons, but as against the government,

and which may consequently be affirmed or disavowed by the granting authority. The fact, that a final title had conditions annexed to it, did not by the laws of Spain render it an imperfect title. When the conditions were not precedent but subsequent, and the final title had issued, or the final act of confirmation had been performed by the proper authority, the title was perfect. This may be seen by reference to the case of Menard's Heirs vs. Massey, 8 How., 203, the form there transcribed by the learned judge is given as an example of a perfect title under the laws of Spain, and yet there are conditions annexed to it to be performed by the grantee, upon the non-performance of which the right would be subject to forfeiture.' "

Under the laws of Spain imperfect titles were not conferred by way of punishment, and it is not conceivable in what manner a penalty was imposed in this case, if in the automatic transformation of the perfect title of 1728 into the imperfect one of 1754, there was no deprivation of the possession of the land granted. How, and when, and under what conditions this penalty was to have been imposed under the Royal Regulations, the court does not inform us. It rested with the granting power to disavow an imperfect grant title, but if disavowed, both the title and the possession under it terminated. If this grant simply became imperfect, what further act of the granting power was necessary to retransmute Leyva's imperfect title of 1754 into his perfect title held from

1728 to that date? The court does not enlighten us, but from its decision, the law of prescription could have no curative effect; the title must to the end of time remain imperfect. It is said that Joshua, the son of Nun, suspended the laws of nature by causing the sun to stand still upon Gibeon and the moon in the valley of Ajalon, so that his enemies might be annihilated; and the court below would seem to have suspended, in its turn, all the written and unwritten laws of Spain, Mexico and the United States, so that this title might be destroyed.

On December 4, 1786, the king promulgated his Ordinance of Intendants (2 White's Recop., 67, 496; Reynold's Comp., 59), by which a change in the mode of government in New Spain was instituted. The governor of New Mexico, by the tenth article (Reynolds, 60), retained the powers he had theretofore exercised. The Royal Regulations of 1754 were re-enacted, and the intendant, and, in New Mexico, the governor, were instructed to again examine into the possession by which the royal lands were held.

There is no proof in this suit, except by presumption based on continuity of possession, that the legal representatives of Jose de Leyva ever justified their possession under this ordinance. What character, then, did their title and possession assume under the rulings of the Court of Private Land Claims? Having become imperfect because of the presumed failure to comply with the provisions of the Royal Regulations of 1754, did it become a plusque imperfect title by the to be presumed additional failure of the grantee to conform to the ordinance of 1786?

The remarkable fact, however, is, that the legal representatives of the original grantee continued in peaceable and uninterrupted possession of the land grant until the territory was ceded, in 1848, to the United States.

From the foregoing statement of fact and law, it is submitted that the following conclusions must be drawn:

That the grant to Leyva, made in 1728, was a perfect grant when made. That the governor of New Mexico then had the power to both make and confirm grants of the royal lands.

That if any conditions, express or implied, were annexed to the grant, they were conditions subsequent which did not affect the title or possession, though from non-fulfillment of them a disfeasance might occur.

That Leyva was not obligated to present his grant for confirmation under the regulations of 1754, it having been, in 1728, made and confirmed by lawful authority.

That if he was so obligated, the presumption that he had complied with the requirements of the regulations would necessarily arise from the continued possession of the lands of his grant.

That the laws of Spain and the regulations of 1754 provided but one method by which a grantee could be deprived of his title and possession, and that was by forfeiture based upon a formal denouncement.

No such denouncement and forfeiture having been proven by the government, the legal representa-

tive of Leyva is now in lawful possession of the land granted to his ancestor in 1728.

That there was no mode, either by the laws of Spain or under the regulations of 1754, by which a title could be transmuted from a perfect into an imperfect title, as is in this case attempeed by the Court of Private Land Claims.

III. The grant to Leyva having been a perfect grant when made in 1728, and when the territory of New Mexico was ceded to the United States in 1848, the Court of Private Land Claims had no jurisdiction over it.

The jurisdiction of the Court of Private Land Claims is conferred by the sixth section of the statute by which it was created. (26 Stat., 854.) By that section it is made obligatory upon claimants to land granted by Spain and Mexico in the territory ceded by Mexico to the United States

> "which were not already complete and perfect"

to present their claims to the court by petition in writing.

By section seven of the statute it is further provided

> "That all proceedings subsequent to the filing of the said petition shall be conducted as near as may be according to the practice of the courts of equity of the United States."

The confirmation or rejection of the grant claim was to be by final decree from which an appeal was given to this court.

But the jurisdiction thus conferred upon the Court of Private Land Claims was not a general equitable jurisdiction designed to supply the deficiencies in the titles conferred by Spain and Mexico which were in their incipient state at the cession of the territory to the United States. The statute, as construed by the Supreme Court, restricted the jurisdiction of the court below to a class of grants which were not equitable save in this, that the United States, as the successor of Spain and Mexico, held the legal title to the land granted in trust for the grantee.

In United States vs. Sandoval, 167 U. S., 278-293, the court say:

> "In Ainsa vs. United States, 161 U. S., 208-223, attention was called to the act of May 3, 1851" to ascertain and settle private land claims in California) "and it was said: 'But, under the act of March 3, 1891, it must appear, in order to the confirmation of a grant by the Court of Private Land Claims, not only that the title was lawfully and regularly derived, but that if the grant were not complete and perfect, the claimant could, by *right and not by grace,* have demanded that it should be made perfect by the former government, had the territory not been acquired by the United States.'"

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"This was affirmed in United States vs. Santa Fe, 165 U. S., 675-714, and Mr. Justice White, speaking for the court, said:

"An inchoate claim, which could not have been asserted as an absolute right against the government of either Spain or Mexico, and which was subject to the uncontrolled discretion of congress, is clearly not within the provision of the act of March 3, 1891, c. 539, creating the Court of Private Land Claims (26 Stat., 854), and therefore is beyond the reach of judicial cognizance. The duty of protecting inperfect rights of property under treaties such as those by which territory was ceded to the United United States in 1848 and 1853, in existence at the time of the cessions, rests upon the political and not the judicial department of the government (Le Bois vs. Brammell, 4 How., 449-461; Ainsa vs. United States, 161 U. S., 208-222), to the extent that only Congress has vested them with authority to determine and protect such rights, can courts exercise jurisdiction. When, therefore, a tribunal of limited jurisdiction is created by congress to determine such rights of property, a party seeking relief must present for adjudication a case clearly within the act, or relief can not be given. United States vs. Clarke, 8 Pet., 436-444."

Hence the only imperfect Spanish and Mexican grant claims of which, under the statute, the Court

of Private Land Claims could take cognizance, and, necessarily, concerning which it could make a final decree of confirmation or rejection, were those in which the petitioner could *by right* have demanded that it should be made perfect by the former government. The court below had, in effect, no equitable jurisdiction; its decrees of confirmation determined no equities; they were to be but the equivalent to the final act of grant by the former government—the conferring of the patent, the evidence of title, which it was the duty of the executive authority of Spain or Mexico to have issued before the cession of the territory.

The Supreme Court by its decision in the cases above cited, following the statute, expressly excluded from the jurisdiction of the court below, created by the statute a court of equity, the element of grace, the foundation of all equity (Pom. Eq. Juris., 1, Sec. 33). The jurisdiction of that court was by the statute to be limited to cases of "imperfect" grant titles, which, necessarirly, were equitable titles, protected, however, as vested interests equally with all other titles by the treaty of cession, and yet the court below had conferred upon it no equitable powers to supply the deficiencies of such titles, which were in their incipient state at the time of the cession of the territory.

Imperfect titles under the statute were, as we have seen, of two classes:

First—Grants where the claimant could have, as a matter of right, demanded of the former government to perfect the grant.

Second—Grants where such action could only have been asked as a matter of grace.

The Supreme Court has nowhere defined, in cases arising under the said statute, these two classes of grants, and, therefore, we attempt the following definitions:

Grants of the first class were those in which the grantee had fulfilled all the conditions precedent, and, in consequence, the government held the legal title in trust for him until the issuance of the final paper of grant. Grants of the second class were those in which something remained to be done by the government or its officers to perfect the title.

This further action of the government, unless it simply involved the approval of the juridical possession given, or some other act required by law of the officers of the government, must necessarily have been dependent upon the further action of the grantee; for the perfecting of his grant must have been dependent upon the performance by him of conditions precedent. If the conditions had been subsequent, the title of the government would have passed, and could only have been resumed by denouncement and forfeiture.

In United States vs. Santa Fe, supra, the court say:

> "When, therefore, a tribunal of limited jurisdiction is created by Congress to determine such rights of property, a party seeking relief must present for adjudication a case clearly within the act, or relief can not be given."

Therefore, the first question for the Court of Private Land Claims to determine on the hearing in each case was, Can the court grant the relief asked? Or, in other words, Has the court jurisdiction of the subject-matter? If not, then the plain duty of the court was to dismiss the petition for want of jurisdiction and not to assume jurisdiction to adjudicate by final decree a grant claim of a character in which it could grant no relief.

In Ex Parte McCardle, 7 Wall., 512-514, the court decided against its jurisdiction in the case presented, and held that, therefore,

> "it is useless, if not improper, to enter into any discussion of other questions."

The court further said:

> "Jurisdiction is the power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause, and this is not less clear upon authority than upon principle."

In Decatur vs. Paulding, 14 Pet., 600, the court say:

> "The authority to decide causes at all, and not the decision rendered therein, is what makes up jurisdiction."

In Applegate vs. Lexington, etc., Mining Co., 117 U. S., 255-267, the court further say:

> "The power to hear and determine a cause is jurisdiction. If the law confers the power to render a judgment or decree, then the court has jurisdiction."

If the Court of Private Land Claims could not grant the equitable relief prayed for in the petition, it could make no final decree affecting the claim of title. The subject-matter was not confided to it by congress, which, having the sole disposal of the public domain, reserved to itself the final disposition of the equities of the grant claim.

What would be the legal effect of a decree of that court adjudicating as imperfect or invalid a grant title over which it had no jurisdiction under the statute creating the court? Clearly, upon principle and precedent, such decree would be null and void. Yet we find that court, in one case at least, exercising jurisdiction over a case in which it could grant no relief, and determining equities, the determination of which congress had still reserved to itself.

In Cesna vs. United States, 169 U. S., 165-187, the court say:

> "In other words, it (the United States) took that territory bound to respect all rights of property which the Mexican government respected, but under no obligation to right wrongs which that government had theretofore committed. But even if there were any obligation on the part of the government, either under the general rules of

international law or the terms of the treaty of cession, to recognize the plaintiff's claim to this particular tract, yet the time, manner and condition of enforcing it would depend upon the will of Congress. And in creating the Court of Private Land Claims, Congress has prescribed the character of claims which that court may determine and the conditions which must attach to any claim which it may enforce. *This claim, even if the grant in its inception was valid, was not one which it was within the province of the Court of Private Land Claims to approve and confirm.*"

If the court had no jurisdiction to approve and confirm, or, in other words, to grant relief, what jurisdiction had it? And what power to make and enter a final decree determining the validity of the title? If the claim was not one within the province of the court, it must have been one the equities of which congress still reserved for its own determination.

The wrong done to grant claimants under Spain and Mexico by the Court of Private Land Claims assuming to exercise jurisdiction over cases not confided to it by congress will become manifest by reference to some decisions of the Supreme Court, made upon what it states to be principles of both civil and international law, which involved the title to lands ceded to the United States under the Louisiana and Florida treaties, and to lands in California ceded under the treaty with Mexico—all these titles emanating from Spain or Mexico.

In the United States vs. Arredondo, 6 Pet., 691, it appeared that the grant to Arredondo was for four leagues square, and made as a present grant from its date, with the subsequent condition that the grantees should settle and improve the land in three years, and, in failure, the grant should become void; further, that they should settle on it two hundred Spanish families; but no time was fixed for the performance of this condition. Possession was taken and improvements made within three years, but the families were not settled when the country was ceded. The Supreme Court declared, upon general principles of equity, that after the cession of Florida to the United States, the condition of settling Spanish families had become impossible by the acts of the grantor, the government of Spain, and certainly immaterial to the United States; therefore, the court held, the grant was discharged from the unperformed conditions and single.

This decision rests not only upon general principles of equity, but also upon the principles of the civil and international law.

Vattel, Law of Nations, V. 1, 6, 19; sections 210, 244, 245.

Ib., V. 2, 6, 7, Sec. 80.

Hall's Mexican Law, Sec. 2481.

Ferris vs. Coover, 10 Cal., 614.

Notwithstanding that section seven of the statute constituting the Court of Private Land Clams includes among the prescribed rules of determination the law of nations and the laws and ordinances of the government from which the grant was derived, yet if

a similar grant had been made in New Mexico, and a claim to it had been submitted to that court, clearly, under the above cited decisions of the Supreme Court, that court would have had no jurisdiction to approve and confirm the grant, and consequently would have had no jurisdiction to annul the grant by its decree. An examination, however, of the various decisions of the Court of Private Land Claims can leave no doubt but that that court would have assumed and exercised jurisdiction, would have reversed the decision of the Supreme Court in the Arredondo case, and would have assumed by its final decree to annul the grant.

It may be that the court would have based its decision upon the eighth paragraph of section thirteen of the statute constituting the court, which reads thus:

> "No concession, grant or other authority to acquire land, made upon condition or requirement, either antecedent *or subsequent*, shall be admitted or confirmed unless it shall appear that every such condition and requirement was performed within the time and in the manner stated in any such concession, grant or other authority to acquire land."

This paragraph would seem to contemplate that this court of equity, the Court of Private Land Claims, in determining the validity or invalidity of a grant with conditions subsequent annexed, should be governed by the strict rule of law, and inhibited from deciding the case under the rule of *cy pres* or the general principles of equity.

No one will deny to the legislative power the authority to change by statute a rule of evidence, but

there is always this limitation upon the exercise of that power, that such change shall not affect or devest vested rights of property.

The consideration of this question, however, is not very material at this point, for the Supreme Court, in the cases above cited, has limited the jurisdiction of the Land Court to cases in which grant claimants could by right, and not by grace, have demanded that the grant should be made perfect by the former government, had the territory not been acquired by the United States (Ainsa vs. United States, supra), and this category could not have included grants in which the conditions subsequent had not been fulfilled, unless the court below should regard such grants as perfect grants, subject to a defeasance, as the Supreme Court has hitherto done. If, however, the Land Court should assume the authority to apply such rule of evidence to grants of that class, such action could but operate to work a forfeiture of lands granted by Spain and Mexicco, and that, too, in cases where the former governments had never attempted to exercise that power, the exercise of which, moreover, had been waived by this government by the treaty of cession.

In Menard's Heirs vs. Massey (8 How., 293-314) the court, in referring to perfect grant titles under Spain, say:

> "For a more perfect understanding of the manner in which a complete title under the Spanish government was executed, the form of such a title, translated from the Spanish, is hereunto annexed."

An examination of the given form of a perfect grant will show that it was subject in express terms to numerous conditions subsequent, which are therein referred to as being embodied in articles 3, 4, 6, 7 and 9 of the regulations of July 17, 1799. (2 White's Recop., 235.)

Numerous other cases might be cited from the opinions of the Supreme Court, but they would only reiterate the decisions of the court which we have cited, that when the government of Spain or Mexico made a grant of land subject to conditions subsequent the whole title of the government passed, and consequently could only be resumed by proceedings in denouncement and forfeiture.

The question of the jurisdiction of the Court of Private Land Claims presents itself in another and more important and serious aspect for the interests of the grant claimants in the consideration of the decisions of the Supreme Court respecting lands granted by Spain and Mexico in what is now the state of California.

New Mexico and Arizona, together with California, were acquired by the United States from Mexico by treaty of purchase and cession. The rule of property must have equally applied to lands situated in either the one or the other of these territories, which were at all times alike subject to the same supreme law. What, under that law, was a vested right of property in one territory must have been a vested right in the others; and what the Supreme Court have decided was a vested right of property in California must, in similar cases, be held to be a vested right in New Mexico and Arizona.

One of the leading California cases is that of Fremont vs. United States, 17 How., 667. In that case the grant was made subject to conditions, which the court held were conditions subsequent, and confirmed the grant.

In the case of Hornsby vs. United States, 10 Wall., 224-240, the confirmation of the grant was opposed by the United States because it was alleged that there was no proof that the conditions subsequent of the grant had been fulfilled. The court say, on page 240:

> "The interest acquired by the grantee could not be devested under the Mexican law, any more than at common law, upon mere allegations and surmises. Some formal and regular proceedings were required to effect such devestiture, and under the Mexican law these had their inception in what is termed a denouncement, by a party desirous of obtaining the land. An investigation then followed, whether or not the conditions had been complied with, or so disregarded as to justify a decree of forfeiture. Without such inquisition and decree, the title did not revert to the government, nor was the land subject to be regranted. The object of the colonization laws and regulations of Mexico was the settlement of the vacant lands of the republic; and grants were usually made to accomplish this purpose without other consideration. But the public, as observed in the Fremont case, 17 How., 561, had no interest in forfeiting them even in these cases,

unless some other person desired and was ready to occupy them, and thus carry out the policy of extending its settlements.

"There having been no forfeiture of the grantor's interest in the present case, nor any such disregard of the conditions annexed to their grant as to have justified a forfeiture, the claimants under the grant are entitled to a confirmation. The interest which passed by the grant, whether it be regarded as a legal title, imperfect in its character, and to be perfected by a subsequent official survey and segregation of the quantity designated, or as a mere equitable or inchoate title, constituted property which the United States was bound to protect by the stipulations of the treaty of cession. That treaty provides for the protection of the rights of property of the inhabitants of the ceded territory. And, independent of the treaty, they were entitled to such protection by the law of nations, according to which, as was said by this court in Strother vs. Lucas (12 Pet., 436), 'the rights of property are protected even in the case of a conquered country, and held sacred and inviolable when it is ceded by treaty, with or without any stipulation to such effect.'

"By the term property, as applied to lands, all titles are embraced, legal or equitable, perfect or imperfect. It was so held by this court in the case of Soulard vs. United States (4 Pet., 511), when considering the

import of the term in a stipulation contained in the treaty by which Louisiana was acquired, providing that the inhabitants of that territory should be protected in the enjoyment of their property. 'It comprehends,' said the court, 'every species of title, inchoate or complete. It is supposed to embrace those rights which are executory as well as those which are executed. In this respect the relation of the inhabitants to their government is not changed. The new government takes the place of that which has passed away.'

"It follows from the views that we have expressed that the appellants possessed, under the grant in this case, at the date of the cession of California to the United States, a right of property in the land granted, and, as a consequence, that their claim is valid and should be confirmed."

From these decisions and many others of a similar character which are to be found in the reports, we may deduce that when in grants of land made by Spain or Mexico there were conditions subsequent annexed, the whole title of the government passed; that such title could only be renewed by the government by formal proceedings in denouncement and forfeiture; that when a condition became impossible of fulfillment by the act of the grantor the grant became single; and that if a forfeiture of the land granted had not been declared by Spain or Mexico prior to the cession of the territory, the power to impose it

did not pass to the United States by the treaty of purchase and cession.

These principles of law laid down by the Supreme Court in cases of grants of land under Spain in Louisiana and Florida, and under Spain and Mexico in California, must be equally applied by the courts in the determination of the validity of grants made by Spain and Mexico in the territories of New Mexico and Arizona and in the state of Colorado, because the United States derived their title to all these territories by treaties of purchase and cession from Spain and Mexico, which had been, prior to the cession, subject to the same supreme law.

These decisions distinguish vested rights of property under treaties of cession; they are founded upon principles of law; and such rights are not subject to be devested upon a mere change of the rules of evidence by the legislative power.

Yet it would seem from the various decisions of the Court of Private Land Claims that these principles are not to be applicable if a grant of land, made by Spain or Mexico, should fortuitously have been located within the boundaries of that portion of the ceded territory which is now designated the state of Colorado and the territories of Arizona and New Mexico.

In the case under consideration, assuming that, as the court below decides, the grant to Leyva became imperfect for an alleged non-compliance with the royal regulations of 1754, the question presents itself, Was it such an imperfect grant that

> "the claimant could by right and not by grace have demanded that it should be made per-

fect by the former government, had the territory not been acquired by the United States?"

Until the court below had affirmatively decided that question, it had no jurisdiction over the grant title, and it did not so decide.

The court below would seem to have regarded the provisions of the regulations of 1754 as conditions subsequent, which were to be annexed to every grant in New Spain made subsequent to the year 1700. But, as already shown, conditions subsequent are those which are expressed in the papers of grant, or implied from laws existing when the grant was made. It is difficult to conceive that the provisions of a law promulgated in 1754 could operate upon a grant made in 1728, as a condition subsequent to the validity of the title to the land granted.

The statute creating the Court of Private Land Claims, by the eighth subdivision of section 13, provides:

> "No concession, grant, or other authority to acquire land made upon any condition or requirement, either antecedent or subsequent, shall be admitted or confirmed, unless it shall appear that every such condition and requirement was performed within the time and in the manner stated in any concession, grant or other authority to acquire land."

This provision, in effect, inhibits the court below from perfecting by its decree any and all inchoate

or imperfect grant titles; it limits its jurisdiction to grants in which all conditions, both antecedent and subsequent, had been performed, and to which the former government held the legal title in trust for the grantee. The grant had become perfect, nothing was wanting but the evidence of title—the patent—which had not been issued because of the cession of the territory to the United States.

We have already shown that this provision of the statute requires a court of equity to construe a condition subsequent, according to the strict rule of law, and that this power, in effect, invests the Court of Private Land Claims with jurisdiction to forfeit lands granted by Spain and Mexico, the title to which, under their laws, had passed absolutely and fully to the grantee, for causes which had arisen prior to the cession of the territory.

And in thus forfeiting lands for causes which the former government alone could assert and enforce, the United States is not compelled to prove the non-fulfillment of the conditions subsequent, the breach of which is alleged, as the former government would have been, but the grantee is called upon to prove their fulfillment, thus reversing the established principles and rules of law in such cases, both under the laws of Spain and Mexico, as well as at the common law, and, in effect, calling upon the grantee to prove a negative.

Hancock vs. McKinney, 7 Texas, 384-435.
Hornsby vs. United States, supra.

If any rights of forfeiture or avoidance of grants of land for the non-fulfillment of conditions subse-

quent subsisted in the government of Spain or that of Mexico, they did not pass to the United States by the treaty of cession; on the contrary, that government, by the treaty, released all such rights, and the court below can not, of their own motion, exercise them.

Fairfax vs. Hunter, 7 Cranch, 603-627.
The People vs. Folsom, 5 Cal., 379.
Minturn vs. Brower, 24 Cal., 644-664.
De Merle vs. Matthews, 26 Cal., 456-478.

And most assuredly can not do so, when the law imposing the penalty which the court below seeks to enforce had been repealed by the former government.

In the case of Hays vs. United States, decided by the Court of Private Land Claims at the November term, 1893, the court say:

> "On the 23d day of December, 1818, by resolution of the Council of the Indies, before a full board at Madrid (and approved by the king), it was decreed that all business pertaining to the alienation of the lands in New Spain should belong to the department of the office of the treasury of the Indies at Madrid. Hall, Mex. Law, 76, section 178.
>
> "The royal cedula of October 15, 1754, authorized the governors in distant provinces of Spain to approve grants of land belonging to the crown, but no such power was conferred on the provincial deputations. But all power or authority conferred on the audi-

encias or governors of New Spain by said royal cedula, which were in conflict with the resolution of 1818, was repealed by it."

If the Royal Regulations of 1754 were so repealed as the court below decided, they must be considered, except as to transactions passed and closed, as if they had never existed; and as is said by Chief Justice Hornblower in James vs. DuBois, 16 N. J. L., 285:

> "For acts done or omitted under an existing law, subject to punishment or prejudice; if that law be repealed the offender will escape the penalty."

I submit to the court, therefore, that if we regard this grant as did the court below, as an imperfect grant, that court had no jurisdiction to perfect it, and consequently none to destroy it.

But the petition in this case did not ask for the confirmation of this grant as an imperfect, but as a perfect, grant; and it was filed under the eighth section of the act constituting the Court of Private Land Claims, which provides:

> "That any person or corporation claiming lands in any of the states or territories mentioned in this act under a title derived from the Spanish or Mexican governments that was complete and perfect at the time when the United States acquired sovereignty therein, *shall have the right* (*but not be bound*) to

> apply to said court in the manner in this act provided for other cases for a confirmation of such title; and on such application said court shall proceed to hear, try and determine the validity of the same and the right of the claimants thereto, its extent, location and boundaries, in the same manner and with the same powers as in other cases in this act mentioned."

Herein Congress does not assume the power to confer upon the Court of Private Land Claims, which it created a court of equity, with a limited jurisdiction, the power to hear, determine, and decree upon a perfect title to land, but provides that such jurisdiction may be conferred by the action of the grant claimant.

If Congress, under the Constitution, could not confer such jurisdiction upon a court of equity, it could not be conferred by the consent of parties. Congress can not, by legislation, enlarge the federal jurisdiction, nor can it be enlarged under the treaty-making power. If Congress should, by its laws, attempt to devest, or cause to be devested, a title to land secured by treaty, such action would be regarded as void, and would be set aside by the courts.

New Orleans vs. United States, 9 Pet., 736.

The Supreme Court of New Jersey, in School Trustees vs. Stocker, 13 Vroom, 115-117, says:

> "The question here is, not whether a competent court had obtained jurisdiction of a party suable before it, but whether the

court itself is competent, under any circumstances, to adjudicate a claim against the defendant below. This kind of jurisdiction can not be conferred by consent, nor can the right to object to it be lost by acquiescence or neglect.

"A judgment pronounced by a tribunal having no authority to determine the matter in issue, is necessarily and incurably void, and may be shown so in any collateral or other proceeding in which it is drawn in question. * * * * When the tribunal has not jurisdiction over the subject-matter, no averment can supply the defect, no amount of proof can alter the case. * * * * Neither the acquiescence of the parties nor their solicitations can authorize any court to determine any matter over which the law has not authorized it to act."

This objection to the jurisdiction of the Court of Private Land Claims was not made at the hearing of the suit before that court, but is now sought to be made in behalf of one of the defendants below.

It is submitted that such objection can properly be interposed at this time under the rules of equity practice.

In Delafield vs. Illinois (2 Hill, 159-161), the court says:

"It is rarely, if ever, too late to object to the jurisdiction of a court when the want of power to hear and determine appears on the

face of the proceedings. * * * * Thus, an appellant from Chancery to the Court of Errors and Appeals may avail himself in the latter court of an objection to the chancellor's jurisdiction, though it was not made before him, when the objection, if valid, is of such a kind that it could not have been obviated had it been stated at an earlier stage of the proceedings."

If any doubts could be entertained as to the soundness of the views above expressed, they would be resolved by the recent decision of this court in Minnesota vs. Hitchcock, 22 Sup. Ct. Rep., 650-654, where Mr. Justice Brewer, delivering the opinion of the court, says:

"A preliminary question is one of jurisdiction. It is true counsel for defendants did not raise the question, and evidently both parties desire that the court should ignore it and dispose of the case on its merits. But the silence of counsel does not waive the question, nor would the express consent of the parties give to this court a jurisdiction which was not warranted by the constitution and the laws. It is the duty of every court of its own motion to inquire into the matter, irrespective of the wishes of the parties, and be careful that it exercise no powers save those conferred by law. Consent may waive an objection so far as respects the person, but it can not invest a court with

jurisdiction which it does not by law possess over the subject-matter."

Before considering the question, whether under the constitution congress have the power to confer upon a court of equity jurisdiction to adjudicate perfect titles to land, it may be well to consider whether, under the treaty of cession of 1848, perfect titles to lands in the ceded territory were not protected by the treaty itself; whether such titles needed any confirmation, legislative or judicial, by the United States, and whether they were not valid under that government as they had been under Spain and Mexico.

The rules of decision for the Court of Private Land Claims are prescribed in the seventh section of the statute constituting the court. They are substantially those embodied in the Florida act, which have been exhaustively considered by Mr. George Ticknor Curtis in his Com. on Jurisd. of U. S. Courts, Vol. 1, 400, et seq. It shall but refer the court to this exposition, and not quote from it, because the question seems to me to have been determined by this court in the case of Ainsa vs. New Mexico and Arizona R. R., 175 U. S., 71-90, in which the court, after reviewing the legislation of congress respecting the judicial determination of land grants within territory derived by cession from Spain and Mexico, say:

> "The result is that the United States, by the act of 1891, have prescribed and defined the only method by which grants, incomplete before the cession, can be completed and made binding upon the United

States; but have neither made it obligatory upon the owner of a title complete and perfect before the cession to resort to this method, nor declared that his title should not be valid if he does not do so.

"A grant of land in New Mexico, which was complete and perfect before the cession of New Mexico to the United States, is in the same position as was a like grant in Louisiana or Florida, and is not one in the position of one under the peculiar act of congress in relation to California; and may be asserted, as against any adverse private claimant, in the ordinary courts of justice."

See also

Chirac vs. Chirac, 2 Wheat., 259-277.
Fletcher vs. Peck, 6 Cranch, 114-135.
Foster vs. Milson, 2 Peters, 253-314.
Baldwin vs. Franks, 720 U. S., 702-713.

If then the grant to Leyva was a perfect grant, and his legal representatives could assert their title in the ordinary courts of justice, such assertion must be by an action at law, and having thus a legal remedy they could not resort for relief to a court of equity, the jurisdiction of which is limited to cases in which there is no remedy at law. Nor could their consent to sue or to be sued in a court of equity, whether established by an act of congress, or of a state or territory, confer jurisdiction upon such court.

Farther, if the local courts had jurisdiction to try the title to the land granted, the United States

had no concurrent jurisdiction because the title to the property originated in a grant by a foreign state within territory subsequently ceded to the United States. The titles to all the lands within the thirteen original states had a similar origin, but that fact has never led the courts of the United States to claim a concurrent jurisdiction over them. As has already been said, congress can not by legislation enlarge the federal jurisdiction, nor can it be enlarged by the treaty making power.

New Orleans vs. United States, 9 Pet., 736.

While it may be true that, with respect to perfect titles to such grants of land, the United States can sue or consent to be sued in a court of equity, yet such procedure would be but in the nature of a bill to quiet title, and for the purpose of determining the boundaries of the land granted, thus separating and distinguishing its area from the mass of the public domain so that the latter might be disposed of by the government, and in no sense would it involve the title to the grant itself.

The constitution of the United States has in express terms recognized the distinction between cases at law and those in equity, and the Supreme Court has in numerous cases announced and enforced it.

The third article of the Constitution and the seventh amendment embrace the provisions by which the judicial power of the United States is defined.

Section 2 of article III reads as follows:

"The judicial power shall extend to all cases in law and equity arising under the

> Constitution, the laws of the United States, and treaties made or which shall be made under their authority."

The seventh amendment to the Constitution reads:

> "In suits at common law, when the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law."

By article III the judicial power is restricted to all *cases* in law and equity—and it has been decided that a case arises within the meaning of the Constitution, whenever any question respecting the Constitution, laws or treaties of the United States has assumed such a form, that the judicial power is capable of acting upon it. The power is capable of acting only when the subject is submitted to it by a party, who asserts his rights in the form prescribed by law.

The decisions of this court have in many cases recognized and defined cases at law and cases in equity.

By cases at law, arising under the Constitution, the laws of the United States and treaties are to be understood suits in which legal rights are to be ascertained and determined in contradistinction where equitable rights alone are recognized and equitable remedies are administered.

> Robinson vs. Campbell, 3 Wheat., 212-221.
> Parsons vs. Bedford, 8 Pet., 433-446.

By cases in equity are to be understood suits in which relief is sought according to the principles and practice of the equity jurisdiction as established in English jurisprudence.

Robinson vs. Campbell, 3 Wheat., 212.

United States vs. Howland, 4 Wheat., 108-115.

1 Story Eq. Jurisp., section 57.

3 Story on Const., 500-507.

The test to be applied, therefore, to determine whether a particular case falls within the equity jurisdiction of the courts of the United States, would seem to be, whether there is a plain, adequate and complete remedy at law.

The whole question has been considered in the case of Fern vs. Holme, 21 How., 481-484, in which the court say:

> "By the Constitution of the United States, and by the acts of congress organizing the federal courts, and defining and inviting the jurisdiction of these tribunals, the distinction between common law and equity jurisdiction has been explicitly declared and carefully defined and established. Thus in section 2, article III of the Constitution it is declared that the judicial power of the United States shall extend to all cases in law and equity arising under the Constitution, the laws of the United States, etc.
>
> "In the act of congress 'to establish the judicial courts of the United States,' this dis-

tinction of law and equity powers is frequently referred to; and by the tenth section of that act, as if to place the distinction between those powers beyond misapprehension, it is provided 'that suits in equity shall not be maintained in either of the courts of the United States in any case when plain, adequate and complete remedy may be had at law,' at the same time affirming and separating the two classes or sources of judicial authority. In every instance in which this court has expounded the phrases, proceedings at the common law and porceedings in equity, with reference to the exercise of the judicial powers of the courts of the United States, they will be found to have interpreted the former as signifying the application of the definitions and principles and rules of the common law to rights and obligations essentially legal; and the latter as meaning the administration with reference to equitable as contradistinguished from legal rights, of the equity law and defined and enforced by the Court of Chancery of England."

On page 486 the court further say:

"In the case of Parsons vs. Bedford, 3 Pet., 446-447, this court, in speaking of the seventh amendment to the Constitution, and of the state of public sentiment which demanded and produced the amendment, say:

"The Constitution had declared in the third article that the judicial power shall ex-

tend to all cases in law and equity arising under this Constitution, the laws of the United States and treaties made or which shall be made, under their authority, etc. It is well known that in civil suits, in courts of equity and admirality, juries do not intervene, and that courts of equity are the trial by jury only in extraordinary cases. When, therefore, we find that the amendment requires that the right of trial by jury shall be preserved in suits at common law, the natural conclusion is that the distinction was present in the minds of the framers of the amendment. By common law they meant what the Constitution denominates in the third article law, not merely suits which the common law recognized among the old and settled proceedings, but suits in which legal rights were to be ascertained and determined, in contradistinction to those where equitable rights alone were recognized and equitable remedies administered.

"The same doctrine is recognized in the case of Strother vs. Lucas, 6 Pet., 768-769; in Parish vs. Ellis, 16 Pet., 453-454. In Bennett vs. Butterworth, 11 How., 669, the chief justice says:

"'The Constitution in creating and defining the judicial power of the general government, establishes the distinction between law and equity, and a party who claims a legal title must proceed at law, and may undoubtedly proceed according to the forms of practice in such cases in the State Court.

> But if the claim be an equitable one, he must proceed according to the rules which this court has prescribed, regulating proceedings in equity in the courts of the United States.'"

The refusal of congress to confer upon the Court of Private Land Claims, a court of purely equitable jurisdiction, a jurisdiction over perfect grants of land within the ceded territory, must be referred to the provisions of the Constitution respecting the judicial power of the general government, as construed by this court, and the attempt to confer jurisdiction by consent of parties to a misconstruction of those provisions.

While I can not doubt but that this court will reverse the decree of the court below, and find the grant to Leyva to have been a perfect grant, yet I most respectfully ask that the question of the jurisdiction of the Court of Private Land Claims over perfect grants be now passed upon.

We have, under the decisions of this court, our remedy in the local courts of the Territory of New Mexico, and that remedy is at law. We are, under the Constitution, entitled to a trial by a jury of the vicinage; and in an action of ejectment against the American Turquoise Company, the nature of our title, and the boundaries of the grant would be determined, and thus this tract of land would be separated from the general body of the public domain and every purpose will be accomplished for which the Court of Private Land Claims was created.

JAMES W. VROOM,
Attorney of the Defendant, L. Bradford Prince.

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OFFICE SUPREME COURT U.S. MAY 2

No. 40.

IN THE

SUPREME COURT

OF THE

UNITED STATES

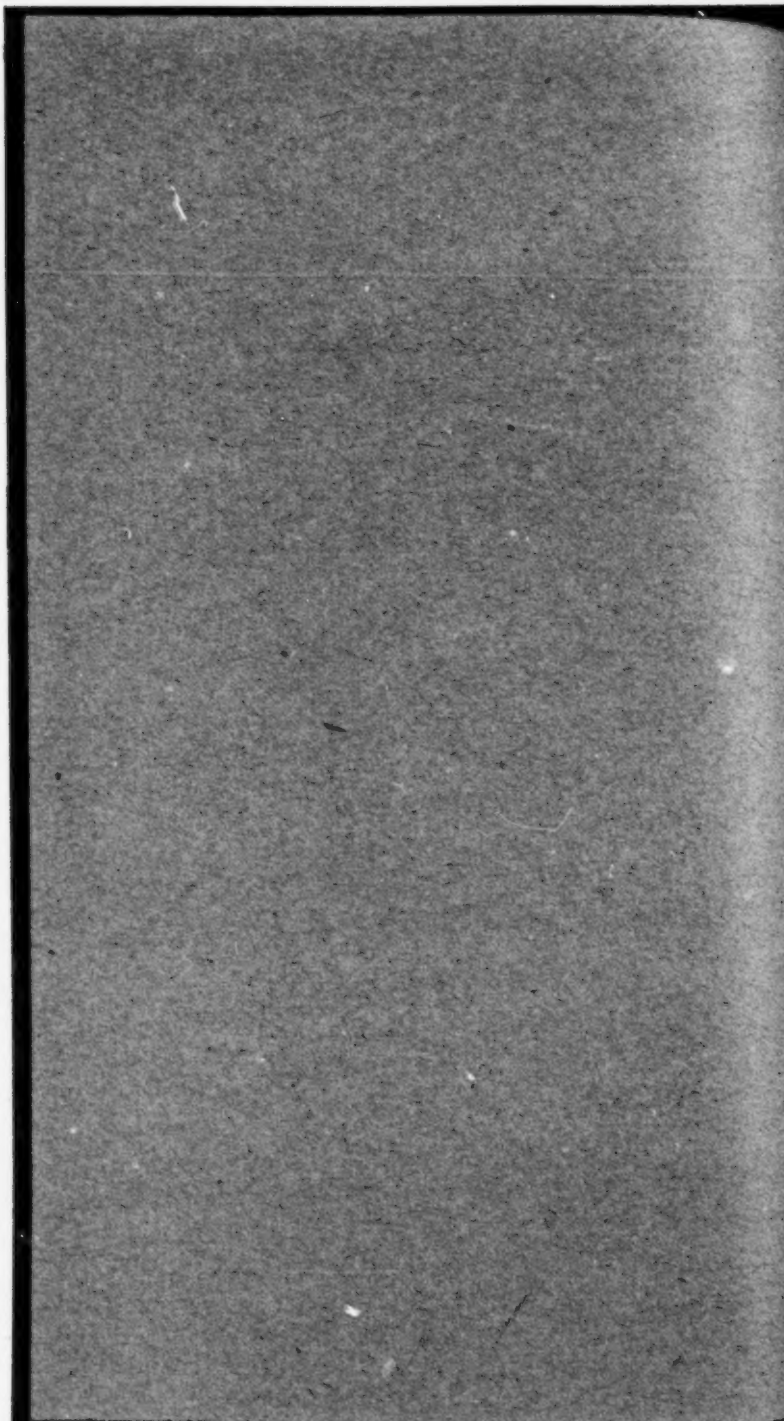
OCTOBER TERM, 1902.

MARIANO F. SENA,
Appellee,
vs.
THE UNITED STATES ET AL.,
Appellee.

On appeal from the Court of Private Land Claims.

PETITION FOR REHEARING.

L. BRADFORD PRINCE,
By His Solicitor,
JAMES W. BROWN.



IN THE

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OCTOBER TERM, 1902.

MARIANO F. SENA, *Appellant,* vs. THE UNITED STATES ET AL., *Appellee.*	No. 40. On appeal from the Court of Private Land Claims.

PETITION FOR REHEARING.

To the Honorable the Supreme Court of the United States:

Your petitioner, L. Bradford Prince, one of the defendants herein, hereby most respectfully petitions this Honorable Court that this case may be reheard for the following reasons:

This court decided in the above case, at this term and on April 6, that "the petition should be dismissed for laches," and based such decision on "the evidence of abandonment and laches of the claimant."

But your petitioner expects to demonstrate to the court, as the grounds for rehearing, that there was no abandonment of the land granted, and no lawful evidence of such act; and that laches can not be imputed to the claimant for any action or neglect of his, either before or after the cession of the territory to the United States, because at no time was there a title or lawful possession adverse to that of the claimant:

First—The defendants by their answers did not plead the alleged abandonment or laches of the petitioner; and they, or either of them, could not in verity have pleaded such abandonment and laches without alleging title and possession in the United States; but such title and possession were not only not pleaded, but were not sustained by proof on the hearing.

Second—The petitioner could not be charged with laches subsequent to the cession of the territory to the United States, unless his grant was imperfect, and for that reason subject to the two years' limitation for filing a petition in confirmation, as was prescribed by the statute creating the Court of Private Land Claims.

I.

The defendants by their answer did not plead the alleged abandonment or laches of the petitioner, and they, or either of them, could not, in verity, have pleaded such abandonment and laches without alleging title and possession in the United States; but such title and possession were not only not pleaded, but were not sustained by proof on the hearing.

Section seven of the statute creating the Court of Private Land Claims enacts "that all proceedings subsequent to the filing of the said petition shall be conducted, as near as may be, according to the practice of the courts of equity of the United States;" so that, if the defendants wished to claim the benefit of the defense of the statute of limitations created by the act, or of the limitations presumed by a court of equity under the purely equitable defense of laches, they must have pleaded the same by demurrer, answer or plea, or such defenses must be held to have been waived.

The defendant, the United States, pleaded the statutory limitation of two years; but this court did not dismiss the petition on that ground, but on the ground of equitable laches.

The defendants did not plead the abandonment or the laches of the petitioner, which, had they intended to claim the benefit of such objections, must have been pleaded. The petitioner was entitled to such pleas by every rule of equity pleading, so that he might know what case he had to meet. Because no such pleas were pleaded by the defendants, no lawful testimony was adduced to sustain issues which had not

been framed. The imputation of the abandonment of the grant and the laches of the grant claimant are first met with in the brief filed with this court, a few days before the hearing, by the counsel for the United States. And, if passing reference is herein made to this brief, the apology of counsel therefor must be that, in default of pleading and proof embodied in the record, it is the only source of information on the subject of the alleged abandonment of the grant and the laches of the claimant, of both of which the petitioner would seem to have been found guilty without having been charged therewith by the pleadings, or convicted thereof by the proofs.

It is settled law that, if the defendant would avail himself of a plea of laches, such plea must be based upon a long, peaceable and adverse possession of the property in controversy. Of objections of this character Judge Story, in his work on Equity Pleading, section 813, says:

> "This is a peculiar defense in equity in cases which are not within the reach of the statute of limitations. Courts of equity have established the doctrine that, after a great lapse of time, and a long, peaceable possession, they ought not to interfere to grant relief, for the policy of the law is to give quiet and repose to titles, and courts of justice ought not to countenance laches or long delays on the part of claimants. Indeed, after a great lapse of time, courts of equity will raise a presumption of some legal or equitable extinguishment of the adverse title, if

> the circumstances of the case will enable them to supply it."

There is, however, a class of cases in which courts of equity will apply the doctrine of laches though it be not pleaded or the bill demurred to, and it is thus distinguished by this court in Willard vs. Ward, 164 U. S., 502-504, when it is said:

> "But the recognized doctrine of courts of equity to withhold relief from those who have delayed the assertion of their claims for an unreasonable length of time may be applied in the discretion of the court, even though laches are not pleaded or the bill demurred to."

An examination of the decided cases under this exception will show that the complainant pleaded title and not possession, and that the defendant pleaded and proved a peaceable, long-continued possession of the property in dispute, and that it was alone because of such possession in the defendant that the courts would take into consideration facts going to show laches proved by the record, though laches was not pleaded.

This doctrine can not be extended to this case. The defendant, the United States, pleaded neither title nor possession, and there is nothing in the record to prove either. The defendants, The American Turquoise Company and J. P. McNulty, pleaded title and possession under the United States, but the record shows that such possession was acquired against law and was void. The defendants' case is not within the

exception, and they should be held to have waived the laches of the petitioner, if any there was.

In view of the neglect of the attorney of the United States to plead abandonment and laches before the Court of Private Land Claims, the counsel who prepared the brief filed with this court readily perceived that, if these objections were to be utilized, even if raised only by assertion and surmise embodied in a brief, they must be based on the title and adverse possession of the United States obtaining at the date of the cession of the territory, for this court had decided that

> "The terms of a treaty are to be applied to a state of things then existing in the ceded territory."
>
> Strother vs. Lucas, 12 Pet., 438.

And that,

> "The United States seem never to have claimed any part of what could be shown by legal evidence and local law to have been severed from the royal domain before their right attached."
>
> United States vs. Arredondo, 6 Pet., 717.

Therefore the counsel in his brief asserted that this grant had been abandoned by the legal representatives of the original grantee prior to the cession of the territory, and that thus the land had reverted to the Mexican government, and had passed to the United States by the treaty of cession.

Counsel defines abandonment under the Spanish law, quoting from the *Partidas* (Brief, 54):

> "If a man be dissatisfied with his immovable estate and abandon it, immediately he departs from it corporally, with an intention that it shall be no longer his, it will become the property of he who first enters therein."

It will be noted that, under this general law, the land did not revert to the government, but became "*the property of he who first enters therein.*" It could only have reverted to the government after an inquest of office (Gonzales vs. Ross, 120 U. S., 625; United States vs. Arredondo, 6 Pet., 691-747). In the latter case the court held that when the government resumed and regranted lands abandoned by the Indians, who held their title alone by occupancy, some procedure in denouncement and forfeiture was necessary. If this was the law in the case of abandonment of a title by occupancy, *a fortiori* must it have been the law in the case of a perfect title to land donated by the king. And it appears from the law of 1682 (2 White's Recop., 52) and the royal regulations of 1754 (Reynold's Comp., 50), that the royal lands, occupied without title, could not be resumed by the king without some judicial proceeding in forfeiture.

If the United States had pleaded that this grant to Leyva had been abandoned under the law of the *Partidas*, it must, to have sustained its plea, have proved that the former government had denounced and forfeited the land, and that thus the title had reverted to it—and of this there is no proof in the record—or that the grant had been abandoned, and

that it had become the property of the person who had first entered into possession of it. In this latter event, it would have been incumbent upon the United States to have pleaded a disclaimer of any title in itself; and thus the abandonment of the claimant would have become immaterial to the government, and an objection which it could not have pleaded, and from which it could have derived no advantage. The question of title would then have been between the legal representative of Leyva and the person claiming under the alleged abandonment, a question not cognizable by the Court of Private Land Claims.

But counsel has another objection which, also, is not based upon the pleadings and proofs. He says (Brief, 57):

> "Abandonment is largely a question of intent. The facts disclosed by this record show abandonment, *at least*, about the time of the foregoing law (1837)."

The law of 1837 is thus given on page 57 of the defendants' brief. By it the departmental assembly of New Mexico decreed:

First—Every individual who abandons the land upon which he has settled and which he acquired by grant, with the intention of establishing himself elsewhere to live there, and does not leave some one to take his place in ordinary labor, shall lose the real property he had acquired.

Second—The acting justice of the peace will immediately give notice to the government of those residents who go to live elsewhere, *that it may be granted to another.*

If the government had pleaded the abandonment of the grant by Juan Angel Leyva under this law, to sustain its plea it must have proved each and every particular enacted by the first section of the law, which, under it, constituted abandonment; and, farther, under the second section, the report of the justice of the peace to the government and the regrant of the land to another by the departmental assembly, which action would have constituted the inquest of office that would have proved the forfeiture of the land (United States vs. Arredondo, 6 Pet., 747). In the absence of the minutes of the departmental assembly which now form a part of the archives in the custody of the Surveyor General, and which would have shown the forfeiture of this grant if it had occurred, and in the absence of all other proof of the fact, the court can not presume an abandonment under this law. And if abandonment under this law had been pleaded by the United States and proved, the land would not have reverted to the Mexican government, but would have been granted to another by the departmental assembly, and hence could not have passed to the United States by the treaty of cession; and this fact would again have necessarily led to a disclaimer of title by the United States.

The law of abandonment formed a part of the general law of Spain and Mexico. It was not affected or changed by the colonization law of 1824 or the regulations of 1828; nor were these nor the general law of Mexico with respect to the ownership and disposition of the public domain altered by the "Bases of 1835," the "Constitution of 1836," or the "Bases of 1843."

Whitney vs. United States, 167 U. S., 529.

Title seven of the "Bases of 1843" (Reynolds', 243) defines the powers of departmental assemblies, and the provisions among others contain the following:

> "To decree what is useful and conformable respecting the acquisition, alienation and exchange of property that may belong to the community and department; with regard to the alienation of lands the existing laws shall prevail."

The law of July 20, 1837, had reference alone to the abandonment of lands within community grants or those belonging to the department, the only lands over which the departmental assembly of New Mexico had control (Sandoval vs. United States, 167 U. S., 278), and the regranting of such lands to another; and could have had no application to the perfect grant to Jose de Leyva, made by the king of Spain in 1728, which was beyond the power of both the departmental assembly and the government of Mexico.

Abandonment was not pleaded, and the record contains absolutely no testimony that this grant was abandoned by its owner. Such abandonment can not be presumed; it was a question of fact, and the burden of proving it was upon the party alleging it (Clark vs. Hammerle, 36 Mo., 639). Nor can the petitioner be deprived of his property, either under the civil or common law, by mere allegation or surmise

Ferris vs. Coover, 10 Cal., 589-615.

But this court in its opinion say:

> "As there is no testimony tending to show that the Leyvas ever sought to resume

possession of the land after the death of Juan Angel in 1839, there was at least a presumption of abandonment."

There could have been no testimony of that character if the grant had been abandoned by Juan Angel, because it would then have passed under the law of the *Partidas* out of the possession of the heirs by another entering upon it; or, under the law of 1837, it would have been re-granted to another; or by judicial proceedings, in the nature of an inquest of office, it would have reverted to the government, and in neither event could the heirs have resumed possession. But, before basing a presumption on the mere fact of non-occupancy of the grant, the government must have proved the abandonment of it. Negative testimony alone as to the former does not warrant a presumption as to the latter, for abandonment is a matter of law and fact, and not of presumption.

The all-sufficient reason why the Leyvas did not "resume possession" of their grant was that they had never lost it. Juan Angel Leyva was in possession when he was killed on his grant protecting his property from the attacks of hostile Indians, and even the attorney of the United States does not presume to allege in his brief that such death was *per se* an abandonment of the property. He left surviving one son and sole heir, Salvador, the grantor of the petitioner (R., 14), who on his father's death became by inheritance the owner of the grant, the widow taking no interest. (2 White's Recop., 99.) The law deemed him to be in legal seizen and possession of the land. (United States vs. Arredondo, 6 Pet., 715.) He was at that time a minor (R., 13), and under the Spanish

and Mexican law abandonment could not have been predicated of a minor, nor, for the same reason, the legal incapacity of a minor, could prescription run against him. While the title was in the minor, Salvador, the possession, care and control of the land was, under the civil law, in his tutor or guardian.

Therefore, Salvador could not, under the law of the *Partidas* have been "dissatisfied with his legal estate and abandon it," nor could he "depart from it corporally with an intention that it shall be no longer his;" nor, under the law of 1837, could he legally have abandoned "the land upon which he had settled and which he acquired by grant, with the intention of establishing himself elsewhere to live there."

Collins vs. Innis, 10 Martin, 287.
Miers vs. Bethany, 9 La., 379.
Orso vs. Orso, 11 La., 62.
Escriche; title, "Menor."
1 Domat's Civil Law, 517.

The Spanish law of abandonment ceased to be in force in New Mexico when the Kearney Code was promulgated September 22, 1846, or when the territory was ceded to the United States in 1848. It is immaterial when, Salvador Leyva, the owner of the grant, was at the latter date a minor.

II.

The petitioner could not be charged with laches subsequent to the cession of the territory to the United States unless his grant was imperfect, and for that reason subject to the two years' limitation for filing a petition in confirmation, as was prescribed by the statute creating the Court of Private Land Claims.

The court say in its opinion:

> "If this be considered an imperfect grant, the right to file it expired years ago; if it be a perfect grant, as now claimed, we see no reason why the owner may not prosecute his claim in the territorial court. Without expressing an opinion whether this was a perfect or an imperfect grant within the meaning of the law, * * * the petition should be dismissed on the ground of laches."

But did not the court deside, by implication at least, that this was a perfect grant, when it dismissed the petition on the ground of laches, and not because it was not filed within the statutory limitation of two years? And did not the court, when it admitted title and possession in Jose de Leyva and his descendants from 1728 to 1839, decide that such possession, under the laws of Spain and Mexico, must have been under a title that was complete and perfect?

The decision of this question is of the highest importance to the petitioner; in fact, it is the only question in this case. If the petition was not dis-

missed because of the statutory limitation, the grant must be held to have been perfect; and, having been a perfect grant at the date of the cession in 1848 to the United States, there could have been no possession by the United States at that time or subsequently, and, therefore, the government could not impute laches to the grant claimant.

This court has decided that "the terms of a treaty are to be applied to the state of things then existing in the ceded territory." (Strother vs. Lucas, 12 Pet., 438.) "In the treaty of cession no exceptions were made, and this court has declared that none can thereafter be made. (8 Pet., 463.) The United States must remain content with that which contented them at the transfer, when they assumed the precise position of the king of Spain." (Strother vs. Lucas, 12 Pet., 446.) "The United States seem never to have claimed any part of what could be shown by legal evidence and local law to have been severed from the royal domain before their right attached." (United States vs. Arredondo, 6 Pet., 717.) "A cession of territory is never understood to be a cession of the property belonging to its inhabitants. The king ceded only that which belonged to him. Lands he had previously granted were not his to cede." (United States vs. Percheman, 7 Pet., 88.) These principles, declared by this court under the treaty with Spain, equally apply to the treaty with Mexico.

Upon these principles the Supreme Court decided that, as the authorities of Spain were authorized to grant the public domain in accordance with their own ideas of the merits and considerations presented by the grantee, two questions only could arise in the courts of the United States, viz., whether in fact a

grant had been made, and its legal effect when made. (United States vs. Arredondo, 6 Pet., 717.)

To these two questions this court has in this case added a third, whether a perfect grant can be forfeited for laches imputed to the owner after the date of the cession of the territory, at the instance of the succeeding government, which had never acquired title to or possession of the land granted by the former government.

In this case the court has decided that a perfect grant of land may thus be forfeited, and the laches which may be imputed to the grant claimant are thus stated in the opinion:

> "Failure to assert such title within a reasonable time thereafter (i. e., "after the establishment of a title as of a certain date," that here referred to being "the death of Juan Angel in 1839") opens the case to the defense of laches."

To this your petitioner begs leave to reply that the assertion or non-assertion of this title by the infant heir of Juan Angel, or his tutor, prior to the cession of the territory in 1848, could have been of no import to the United States, a foreign sovereignty; the title, as it then existed, was what was protected by the treaty of cession. So, too, if the grant owner could, after the treaty, have asserted his title in the territorial courts, the United States, having no interest in the land, could not have been a party defendant to the action, and it could in no way have concerned the government. If to obtain a confirmation or rec-

ognition of his perfect title it was necessary for the claimant to bring suit against the United States, such suit could not have been brought until authorized by the government. The territory was ceded in 1848, the tribunal was created in 1891. This almost criminal neglect by the government of its treaty obligations can not be imputed to the petitioner as laches, nor can these facts open the case to a defense of laches by the United States, which had neither title to nor possession of the land in controversy.

Again, the court say:

> "In 1854, six years after the treaty, a surveyor general was appointed for New Mexico, whose duty it was to ascertain the origin, nature, character and extent of all claims to lands under the laws, usages and customs of Spain and Mexico, and report to Congress, with a view of confirming *bona fide* grants, and giving full effect to the treaty. No action appears to have been taken before him to ascertain the validity or boundaries of this grant, although the act seems to have remained in force until 1891, when the Court of Private Land Claims was created. The public land surveys were extended over this tract in 1861; homestead and other entries were made, improvements established, patents secured, mines opened and developed, but no attempt to assert the rights of the grantee or his descendants."

To this statement your petitioner begs leave to reply that—

First—It was the duty of the surveyor general, and not of the grantee, to ascertain the origin, nature, character and extent of this grant, and to report thereon to Congress for its final action. His neglect of duty for thirty-seven years can not be imputed as laches to the petitioner.

Second—That under the said act of 1854 the lands covered by this grant were reserved from sale or other disposal by the government until the final action of Congress thereon; and that, therefore, every homestead, mining or other entry made under the government on this land prior to March 3, 1891, when the statute was repealed, was absolutely void, and the actions of the government in this respect in violation of its own laws, and the actions of mere trespassers upon his grant can not be imputed to the petitioner as laches.

First—This grant was donated in 1728. An examination of the papers of grant (R. 112) will show that juridical possession of the land was given May 25, and from the caption of the *protocol* it will appear that it was deposited in the archives of New Mexico May 29, 1728. These papers formed the *protocol* and record of the grant. This recordation was a public act, carrying on its face faith and credit that would make full proof in the tribunals of Spain, hence in those of the United States. (Farmer's Heirs vs. Eslava, 11 Ala., 1028-1041.) These papers were still deposited as a record in the archives of New Mexico when, in 1848, the territory was ceded to the United States.

The surveyor general of New Mexico, in his annual report to the Secretary of the Interior dated September 30, 1856, which was in that year laid before Congress, annexes to it two schedules, the first being

> *"Schedule of documents relating to grants of land by the Spanish and Mexican government forming the archives of the surveyor general of New Mexico."*

This schedule enumerates 1,014 items, and No. 240, index number 441, is: "1728, Leiba, Jose de—Grant."

Schedule No. 2 is entitled

> *"Abstract of grants to land selected from the public records of the Territory, found in the archives at Santa Fe, New Mexico."*

And of this schedule, No. 87, of a total of 197, is: "May 25, 1728, Leiba, Jose de, Santa Fe County, Juan Domingo de Bustamente, Governor." (Cong. Doc., 1856, 231, 245.)

So that it is a fact that the government, from its own archives and records, had knowledge, and every citizen notice, of the grant in 1856, and both were bound by it. This grant was not, in 1893,

> "found and brought to public notice for the first time in perhaps a century,"

as the attorney of the United States, imputing his own inexcusable ignorance as a public officer to others, says on page 47 of his brief.

The statute of 1854 made it the duty of the surveyor general

> "to ascertain the origin, nature, character and extent of *all* claims to lands under the laws, usages and customs of Spain and Mexico."

He was empowered for that purpose to issue notices, summon witnesses, administer oaths, and perform all other acts in the premises.

Although this grant was No. 87 of the total of 197 grant claims reported to Congress by the surveyor general in 1856, by schedule No. 2, he took no action to fulfil his duty to examine and report to Congress upon this grant for thirty-seven years, from 1848 to 1891, when the statute of 1854 was repealed. This glaring and unexcused default of the government in the fulfilment of its treaty obligations, can not be imputed to the petitioner as laches because he did not "assert" his title *during the time it was pending undisposed of before the survyor general under the statute of 1854.*

> "It is a well-established principle that, when an individual, in the prosecution of a right, does everything which the law requires him to do, and he fails to attain the right by the misconduct or neglect of a public officer, the law will protect him."
>
> Lytle vs. Arkansas, 9 How., 314-332.

If the petitioner had "asserted" his title by voluntarily filing his petition for confirmation with the Sur-

veyor General, such action would have added nothing to its validity, nor would it have been notice of his title of equal import to the record of it in the archives of the United States; in fact, it would not have been notice of any nature. If the Surveyor General had found and reported the grant to be perfect, it would in no wise have strengthened it. If Congress had confirmed it, that action, also, would have added nothing to the title, for the grant had been perfect since 1728. The grantee's title would still have been that donated by the king of Spain, and the best evidence and notice of the grant would have been the original archive record of it.

Paige vs. Scheibel, 11 Mo., 167, 184.

Second—The eighth section of the statute of 1854 provides:

> "He (the Surveyor General) shall make a *full report on all claims* as originated before the cession of the territory to the United States by the treaty of Guadalupe Hidalgo of 1848 * * * which report shall be laid before Congress for such action thereon as may be deemed just and proper, with a view to confirm *bona fide* grants and give full effect to the treaty between the United States and Mexico; *and until the final action on such claims, all lands covered thereby shall be reserved from sale or other disposal by the government.*"

It can not be questioned that this grant, which had remained as a record in the archives of Spain, Mexico and the United States since 1728, was

one of the *claims* which the Surveyor General was to examine and report to Congress for its action. He had knowledge of it, and had reported to Congress that it was amongst the archives of Spanish grants in his official custody. The statute made it the duty of the Surveyor General to examine and report on this grant, and did not make it the duty of the claimant to file a petition in confirmation (Paige vs. Scheibel, 11 Mo., 184). His title was perfect, and the filing of his *protocol* in 1728 was the grant (Whitney vs. United States, 167 U. S., 529), and the record of the grant. This record was a public record, and it estopped the king of Spain from again granting the land, as also the Republics of Mexico and the United States, his successors.

United States vs. Arredondo, 6 Pet., 737.
Fletcher vs. Peck, 6 Cranch, 87.

If, then, this was such a claim, the land embraced by it, the boundaries of which were stated in the act of juridical possession, and which at that time, in 1856, could have been readily ascertained and determined by the Surveyor General, and thus the land granted distinguished from the public domain, the only possible object in the case of a perfect grant (Botiller vs. Dominguez, 130 U. S., 245) was, under the act of 1854, reserved from sale or other disposal by the government.

This question of reservation has been decided by this court. In Stoddard vs. Chambers, 2 How., 317, a claim was located on land within a Spanish grant claim, which had been filed and recorded under the statute, but not recommended to Congress for confirmation. By the act of 1811 (2 Stat., 617), until the

decision of Congress was had, the land covered by a Spanish claim could not be offered for sale, and the court held that the location, and the patent founded on it, were absolutely void.

Eaton vs. Salisbury, 21 How., 431.

Doolan vs. Carr, 125 U. S., 634.

Lake Superior Co. vs. Cunningham, 155 U. S., 373.

In the matter of Baca Location No. 3 (30 L. D., 102) the Secretary of the Interior, in construing this statute, says:

> "It mattered not whether the claim was a valid one. If the lands were covered by a Spanish or Mexican *claim* they were to be reserved for the very purpose of affording an opportunity of investigating and determining the validity or invalidity of the claim. This investigation was to be made in the first instance by the Surveyor General, but the action of that officer was not final. His report was to be submitted to Congress, and there the means of final action were to be provided. To fully meet the purpose of the reservation it was necessary that it should at once become operative whenever and wherever lands were covered by a claim such as the statute describes."

It appears from the answer filed by the defendants, the American Turquoise Company and J. P. McNulty (Rec. 5), that they claimed title from the United States under the mining laws,

> "and that they and their grantees have enjoyed the exclusive, undisturbed and quiet possession of the same for more than ten years last past."

This answer was filed January 16, 1900, so that the alleged title to the lands attempted to be granted by the United States had its inception on or prior to January 16, 1890, at which time the statute of 1854 was in force, and therefore such lands were reserved from sale or other disposal by the United States, and such alleged titles were absolutely void.

The court further say:

> "The Court of Private Land Claims was established in 1891. * * * It was not until 1899 that the petition in this case was filed by a person who appears, in 1895, to have found lineal descendants of the original grantee, from whom he had secured deeds of abandoned grant, the very existence of which seems to have been forgotten."

To this statement your petitioner begs leave to reply that, the statute creating the Court of Private Land Claims made it obligatory upon claimants under imperfect grants to file their petitons for confirmations within two years, or the claim would be barred; but a person claiming under a Spanish grant that was complete and perfect at the time when the United States acquired sovereignty

> "shall have the right (but shall not be bound) to apply to said court," etc.,

without any limitation as to time. So that the petitioner could to-day file his petition if he saw fit to do so, and a defendant, who could neither plead nor prove a title to or lawful possession of the land, could not impute to him his alleged delay as laches.

Aside from the fact that congress could not confer upon this court of equity, jurisdiction to determine the title to a perfect grant of land, and that the claimant could not do so by any action of his, the six years' delay of the petitioner in filing his petition for confirmation would not subject him to the charge of laches.

In Galliher vs. Caldwell, 145 U. S., 368-372, the court, in speaking of the adjudicated cases of this character, say that they

> "proceed on the assumption that the party to whom laches is imputed had knowledge of his rights, and an ample opportunity to establish them in the proper form; that by reason of his delay the adverse party has good reason to believe that the alleged rights are worthless or have been abandoned; and that, because of the change in the condition or relation during this period of delay, it would be an injustice to the latter to permit him to now assert his title."

The court, in its opinion, say that the owner of this grant, Salvador Leyva, who had been in legal possession of it since the death of his father, in 1839, had no knowledge of "this abandoned grant, the very existence of which seems to have been forgotten." If

this statement be true, the first element of the above doctrine is wanting. But in making this statement the court evidently placed confidence in the verity of the assertions of the counsel for the United States made in his brief, as the court had the right to do in any statement of fact in a pending suit made to it by an officer of the court. But in this instance the confidence was misplaced. Your petitioner has already proven that his grant was not, and could not have been, abandoned, and when counsel for the United States asserted that this grant was, in 1893, "found and brought to public notice for the first time in perhaps a century," he must have known that the truth was that the *protocol* of this grant of 1728, the will of Simonde Leyva, of 1785, devising the grant to his son, and the deed of 1833, by that son, conveying the grant to Juan Angel Leyva, which latter the counsel produced in evidence at the hearing before this court, were subsisting public archives in the custody of the surveyor general of New Mexico, which had been transmitted by Spain and Mexico to the United States on the cession of the territory, and that the surveyor general had reported such grant to congress in 1856, as being among the said archives; and, further, that it was in evidence in the record that Salvador, the son of Juan Angel Leyva, knew of this grant, which he called "*Pueblото de los Leiba*," and his ownership of it. (R., 14.)

In this case it can not be even pretended that the grant owner has had, since the cession of the territory in 1848, an ample opportunity to establish his rights as against the United States, if that were needful, in a proper forum established by the government.

But the most important element of the above doctrine is that the petitioners' delay caused such a "change in condition or relation" respecting the subject matter of litigation "during this period of delay," that "it would be an injustice to the latter to permit him to assert his title."

The circumstances contemplated by this doctrine do not prevail in this case. The defendants had notice of this title from the date of the cession of the territory to the United States. In 1893 they had notice of the purchase of this grant by the petitioner. In 1896 an action in ejectment, later discontinued, was brought by the petitioner in the territorial courts against the defendants, the American Turquoise Company and John P. McNulty, so that they had at no time cause to believe that the rights of the grant were worthless or had been abandoned. At that time, and at all times, these defendants had a mere possessory right to "about one hundred acres of land" (R., 5) within this grant of some sixteen thousand acres, which, imputing to them a knowledge of the law, they knew to be absolutely void. Yet these defendants persisted in their trespasses upon the petitioners' land, and continued to operate his mines thereon, so that any "change in condition or relation" which happened "during this period of delay" was caused by the unlawful acts of the defendants which have occasioned damage to the petitioner and not to them—the capital and assets of the company being the turquoise "conveyed" from the mines of the petitioner—and, therefore, such delay in "asserting" his title "during this period of delay" can not be imputed to the petitioner as laches. For the defendants in this case "there is," as Falstaff says, "no equity stirring."

From the facts of the petitioner's title, above stated, under which the law deems him and his grantors to have been in legal seizen and possession of this grant of land since 1728 (United States vs. Arredondo, 6 Pet., 715); and from the failure of the defendants to plead or prove title to or possession of this land, the alleged neglect of the petitioner to "assert" his title within a reasonable time, in the manner suggested by the court, does not open this case of a perfect grant title to the objection of laches by the United States or its grantees; and, if it did so, the record does not show that abandonment or laches were pleaded, or that the grant was abandoned, or that laches could in any wise be imputed to the petitioner.

If, then, the facts of this case, and the law applicable to them, as above set forth, be true, your petitioner respectfully prays that this case may be reheard.

And your petitioner further prays that the mandate in this case to the Court of Private Land Claims be withheld until the decision by this Honorable Court in the matter of this his petition.

Your petitioner further begs leave to suggest, if at this time it be meet and proper, that, in any event, the decree of this court should be modified to conform to the decision of the court herein. This decree affirmed the decree of the court below, which was "that the title to the tract of land alleged to have been granted by the king of Spain by Governor and Captain General Juan Domingo de Bustamente, on the twenty-fifth day of May, A. D. 1728, is of no validity and is not entitled to confirmation by this court." (R., 240.) This decree is not in conformity to the de-

cision of the Court of Private Land Claims, which was that the claim became imperfect and was "barred by this statute of limitations (of two years), and hence must dismiss the case for want of jurisdiction under the statute." (R., 241.) The decision of this court is that this grant claim "is one which the Court of Private Land Claims could not be called upon to confirm, and that, if for no other reason, the petition should be dismissed on the ground of laches," and the decree below is in no wise in conformity to it. By neither court was it decided that the grant was "of no validity," and, therefore, "not entitled to confirmation" by the Court of Private Land Claims.

And your petitioner will ever pray, etc.

L. BRADFORD PRINCE,
By his Solicitor, JAMES W. VROOM.

We certify that the foregoing petition is, in our opinion, well founded, and is not interposed for the purpose of delay.

JAMES W. VROOM,
Of Counsel.

ROBERT T. McNEAL,
Of Counsel.

Supreme Court of the United States.

No. 40.—October Term, 1902.

Mariano F. Sena, Appellant, vs. The United States. } Appeal from the Court of Private Land Claims.

[April 6, 1903.]

This was a petition for the confirmation of a tract of land in the county of Santa Fé, New Mexico, known as the José de Leyba grant, which has never been officially surveyed, but is estimated to contain about 18,000 acres.

After filing the petition it was found there were a number of persons holding portions of the tract sued for under a claim of title adverse to the grant; and upon motion of the United States requiring these adverse claimants to be made parties defendants, the original petition was amended, and two of these, the American Turquoise Company and one McNulty, joined with the United States in defending the case.

The court disallowed the claim upon the ground that the evidence did not show a perfect grant, inasmuch as there was no evidence of a compliance with the royal ordinance of 1754, which provided that all grants subsequent to 1700 must be confirmed as a prerequisite to their validity; and that, if it were an imperfect grant, it should, under the act creating the Court of Private Land Claims, have been filed within two years from the taking effect of the act, and was therefore barred.

Since the decree of the Court of Private Land Claims certain additional evidence has been discovered, tending to show possession of the land covered by the grant for a long period subsequent thereto, and which it is now insisted supplies the defects which caused the rejection of the grant.

Mr. Justice Brown delivered the opinion of the Court.

The petition of Leyba, upon which the grant was originally made, and which is the material document in this case, and is in the Spanish language, is thus translated in the record:

"City of Santa Fé, May 24, 1728, before the governor and captain general of this kingdom, there was presented this petition with its contents:

"Joseph de Leyba, resident of the city of Santa Fé, appear before your excellency in due legal form, and state that in accordance with the royal ordinance of his Royal Majesty, I enter a piece of land and wood, vacant and unsettled, enough for half a *fanega* of corn-planting land, somewhat more or less, which is bounded on the east by the San Marcos road; on the

south by an arroyo called Cuesta del Oregano; on the west by land of Juan Garcia de las Rivas, and on the north by lands of Captain Sebastian de Vargas.

"Therefore, I ask and pray, your excellency be pleased to make me in the name of His Majesty, a grant for the said piece of land, for myself and my children, heirs and successors, and that the act of royal possession be executed to me whereby I will receive benefit and favor as well as justice which I seek. And I swear in due form that this my petition is not made in malice and as it may be necessary, &c.

JOSEPH DE LEYBA."

Annexed thereto is the grant of the governor and captain general of the province, with the condition that the grantees settle the land within the term prescribed by the royal ordinances, and a direction to the alcalde to put the party in possession.

Following this is the report of the chief alcalde of the city of Santa Fé, that having taken witnesses and "inspected the lands and woods prayed for by the said petitioner," he put him in royal possession by performing the customary ceremonies of livery of seizin.

There are two disputed propositions connected with this petition of Leyba's: (1) As to the quantity of land granted; (2) as to its boundaries. It is admitted by both parties that the above translation from the record of the quantity of the land granted "as a piece of land and wood, vacant and unsettled, enough for half a *fanega* of corn-planting land, somewhat more or less," is incorrect, the original Spanish being as follows: "*Registro un pedaso de tierras y monte, yermo y despoblado, que cabe media fanega de maiz de sembradura, poco mas ó menos.*"

The argument of the government is that the quantity covered by the grant was only enough land to plant half a *fanega* of corn, a little more or less, and that as a *fanega de maiz* is a measure of corn which will plant 8.82 acres, half of a *fanega* would measure, 4.41 acres; the government translation being "I register a piece of land, and woods, uncultivated and unsettled, that will contain half a *fanega de maiz de sembradura*, a little more or less." The inference from this is that all that was conveyed was a piece of land that "will contain" enough for half a *fanega of maiz.* Claimant's translation, however, of the words "que cabe" is that it is a tract of land that "contains" within its outer boundaries half a *fanega* of corn, that is, of land capable of cultivation.

The probabilities, aside from the fact that the word "cabe" is a verb of the present tense, favor the construction of the claimant, as the words "lands and woods" would hardly be used as descriptive of a tract of four and one-half acres. In addition to that, however, the description of quantity is wholly inconsistent with the boundaries, (hereafter stated,) which evidently contemplated a large tract of land, according to the Spanish and Mexican customs of making grants to settlers. Indeed, a

grant of four and one-half acres of land at a distance from any town, city or settlement is so rare that the presumptions are all against it. If the boundaries were defined with accuracy, we should have very little difficulty in holding that they would not be controlled by the vague description of "a parcel of land and woods, uncultivated and unsettled, which includes half a *fanega* of corn-planting land."

This is the more apparent by an inspection of the subsequent documents, which include a will of Simon de Leyba, son of the grantee, of the year 1783, giving the boundaries of the tract, and a deed of Salvador Antonio de Leyba, grandson of José, to his son in 1834, also describing the lands by similar boundaries. Indeed, none of the subsequent documents make any reference whatever to the half *fanega* of corn-planting land. The will also contains a bequest of live stock and farming tools seemingly appurtenant to the ranch and greatly in excess of what would naturally belong to a tract of four and a half acres.

2. The difficulty, however, is with the description of the boundaries themselves, which is: "On the east by the San Marcos road; on the south by an arroyo called Cuesta del Oregano; on the west by land of Juan Garcia de las Rivas, and on the north by lands of Captain Sebastian de Vargas." In the will of Simon de Leyba of 1783 the boundaries are the same upon the south and east, and on the north "the road which goes towards Pecos from the Cerillos, *or* lands of Captain Sebastian de Vargas," and on the west "with the lands of the old Pueblo of the Cienega." The land is described in substantially the same terms in the deed of 1834. The description of the lands on the east side as bounded by the San Marcos road is clearly defined. The description of the north boundary as the road from Pecos to the Cerrillos is also defined with somewhat less certainty, the lands of Sebastian de Vargas having been located, surveyed and confirmed several miles to the east of the Leyba grant; but upon the west and south the boundaries, even as sworn to orally by witnesses, are so uncertain as to afford little guide to a surveyor in attempting to locate the tract.

The west boundary, which is described in the grant as "the lands of Juan Garcia de las Rivas," is described in the will of 1783 as "the lands of the old Pueblo of the Cienega." While there is some evidence from the archives that the father of Garcia de las Rivas, in 1701, owned a piece of land somewhere west of the Leyba tract, known even then as the old Pueblo of la Cienega, there is nothing to show the east boundary of the Pueblo, and consequently the west boundary of the Leyba tract. The south boundary, said to be "an arroyo called Cuesta del Oregano," it seems to be impossible to locate with any degree of certainty, though it was probably near the Coyote Spring, at which the only house built upon this tract appears to have been located. This house long since fell into

ruins, and there is no evidence that it has been occupied since the last owner of the grant, Juan Angel de Leyba, was supposed to have been killed by the Indians in 1839.

The evidence of possession subsequent to the grant does not afford much aid in fixing the boundaries, since the land, like most of that in Spanish-American territories, was not of a kind admitting of a well defined, actual and adverse possession, such as that of cultivated land. The most favorable view for petitioner that can be taken of this evidence is that possession of a house or a certain field of arable land may be referable to the entire tract included within the boundaries of the grant; but when the boundaries themselves are indefinite, the possession of a house is of no value in fixing the boundaries. A grant too indefinite to be located and never fixed by any survey, is void as against the United States. As was observed in *United States* v. *Delespine*, of a Spanish grant in Florida, (15 Pet. 319, 335,) "the public domain cannot be granted by the courts." They may locate the boundaries fixed by grant, but the boundaries must be so fixed as to admit of a survey. (*United States* v. *Miranda*, 16 Pet. 153, 160; *United States* v. *Ring*, 3 How. 773; *Villalobos* v. *United States*, 10 How. 551; *Arrivaca Land and Cattle Co.* v. *United States*, 184 U. S. 649, 652.)

The grant was made and possession was given to the grantee in 1728. Nothing being shown to the contrary, we presume that the possession continued until 1783, the date of the will of Simon de Leyba to his son Salvador Antonio de Leyba, "whom I recognize as my sole heir." The next item of interest tending to show possession is the deed of Salvador Antonio de Leyba in 1834 to his son Juan Angel de Leyba, who are both described as residents of the city of Santa Fé, wherein the same boundaries are also given, although the land is called "the rancho of the Coyote Spring, with its houses and corrals, together with the grant in which the said ranch is situated, which was given to my grandfather by the King of Spain May 25, 1728." Juan Angel appears to have been killed by Indians a few years after this deed was made, but it seems to have been uncertain whether he was in actual possession of the tract.

To rebut the case made by the claimant the government offered in evidence the depositions of several residents of that neighborhood, who swore that they had never heard of the José de Leyba grant, or its boundaries. Objection was made to the reading of these depositions upon the ground that the witnesses named were present in court, and might be sworn orally. It is unnecessary to determine whether the court erred in admitting the depositions under such circumstances, in view of the vague and unsatisfactory evidence on behalf of the claimant of the boundaries and possession of this tract.

Admitting that the documents introduced afforded a sufficient presumption of a continued possession from 1738 to 1834, there was no evidence of the occupation of the land by any member of the Leyba family subsequent to 1839. This fact of a total absence of any claim to the land made by the last heirs of the occupant, and that the house was allowed to fall into ruins, is strong evidence either that the land was abandoned as not worth cultivating or that a residence there had become too dangerous by reason of the presence of hostile Indians. In this connection the court below found that "the evidence as to the settlement and occupation of the tract purporting to have been granted, continuity of possession, cultivation, residence, improvement, claim of ownership, notoriety of the grant and knowledge of the existence in the community or by the oldest inhabitants now living, is so vague, contradictory and uncertain as to be almost wholly wanting." In the absence of clear evidence to the contrary we deem it our duty to adopt the opinion of the court below in that particular. (*United States* v. *Pendel*, 185 U. S. 189, 197.)

While in construing these Spanish grants, owing to the loose manner in which they were made, and the boundaries described, we have been extremely liberal, still we are bound to consider that grants of this description, as of all others, must be construed favorably to the government, and the grantee is bound to show not only the grant itself but that the boundaries were fixed with reasonable certainty. (*Slidell* v. *Grandjean*, 111 U. S. 412, 437; *United States* v. *Oregon &c. R. R.*, 164 U. S. 526, 539.)

3. But conceding that an experienced surveyor, acquainted with the land in that neighborhood, might locate the boundaries of this tract, there is a still more serious difficulty in the evidence of abandonment and the laches of the claimant, which defenses may properly be considered together. Under our Anglo-Saxon system of jurisprudence, questions of the abandonment of land by the owner rarely arise, since they are usually sold to a purchaser or to the State for taxes; but the Spanish law recognizes distinctly the right to abandonment. It is stated in 1 Partidas, Law 50, p. 365, that "if a man be dissatisfied with his immovable estate and abandons it, immediately he departs from it corporally, with an intention that it shall be no longer his, it will become the property of him who first enters thereon." See also Hall's Mexican Law, § 1489. The same principle is stated by Escriche, Title "*Abandono de cosas*": "If an owner voluntarily abandons a thing, whether personal or real, with intent no longer to count it in the number of his possessions, because it is useless or burdensome, or for mere caprice, he loses his ownership, and the first who occupies it makes it his." We are also referred by counsel to a law of the Departmental Council of New Mexico enacted in 1837, which declares that "every individual who abandons the land upon which he has settled and which he acquired

by grant, with the intention of establishing himself elsewhere to live there, and does not leave some one to take his place in ordinary labor, shall lose the real property he had acquired." See also *Landes* v. *Perkins*, (16 Mo. 238, 256;) *Sidex* v. *Durand*, (67 Tex. 256.)

As there is no testimony tending to show that the Leybas ever sought to resume possession of the land after the death of Juan Angel in 1839, there was at least a presumption of abandonment. Not only is there no evidence tending to show possession of the land by representatives of the original grantee since 1839, but for sixty years thereafter there was no attempt made to assert title thereto. By section 7 of the Private Land Claims act "all proceedings" therein "shall be conducted as near as may be according to the practice of the courts of equity of the United States," and by section 13 no claim shall be allowed upon an imperfect title unless "the claimant would have had a lawful right to make it perfect had the territory not been acquired by the United States;" nor upon a perfect title "if the same was not at said date already complete and perfect." While it is true that we have held that evidence of possession since the date of the treaty cannot be regarded as an element going to make up a title, (*Crespin* v. *United States*, 168 U. S. 208; *Hayes* v. *United States*, 170 U. S. 637, 653; *Hays* v. *United States*, 175 U. S. 248, 259,) it does not follow that abandonment of the land and failure to assert a title since the treaty may not operate as a bar. It is clear that, in the establishment of a title as of a certain date, possession subsequent to that date is of no value; but considering the title to have been sufficient as of that date, failure to assert such title within a reasonable time thereafter opens the case to the defense of laches.

In *United States* v. *Moore*, (12 How. 209,) it was said of a Spanish grant in Louisiana: "We are called on to decide in this case according to the rules governing a court of equity, and are bound to give due weight to lapse of time. The party was under no disability, and slept on his rights, as he now claims them, for nearly fifty years, without taking a single step. He makes no excuse for his long delay, and cannot now get relief by having his title completed. No case has come within our experience where the obscurity and antiquity of the transaction more forcibly than in the present case, required a court of equity to bar the complainant of legal presumptions founded on lapse of time; and where the bar should take the place of individual belief." To the same effect are *Gildersleeve* v. *New Mexico Mining Co.*, (161 U. S. 573,) and *United States* v. *Martinez*, (184 U. S. 441.)

There are facts connected with this case which render the doctrine of laches peculiarly applicable. This land passed into the possession of the United States under the treaty with Mexico of 1848. Possession of the land had then been abandoned by the descendants of the grantees for at

least nine years, and probably longer. In 1854, six years after the treaty, a surveyor general was appointed for New Mexico, (10 Stat. 308,) whose duty it was to ascertain the origin, nature, character and existence of all claims to lands under the laws, usages and customs of Spain and Mexico, and report to Congress with a view of confirming *bona fide* grants, and giving full effect to the treaty. No action appears to have been taken before him to ascertain the validity or boundaries of this grant, although the act seems to have remained in force until 1891, when the Court of Private Land Claims was created. The public land surveys were extended over the tract in 1861; homestead and other entries were made, improvements established, patents secured, mines opened and developed, but no attempt made to assert the rights of the grantee or his descendants. The Court of Private Land Claims was established in 1891, and all persons having imperfect titles were required to present them within two years, and all having perfect titles had the right, but were not bound, to apply to that court for confirmation of such title. It was not until 1899 that the petition in this case was filed by a person who appears, in 1895, to have found lineal descendants of the original grantee, from whom he had secured deeds of this abandoned grant, the very existence of which seems to have been forgotten. If this be considered an imperfect grant, the right to file it expired years ago; if it be a perfect grant, as now claimed, we see no reason why the owner may not prosecute his claim in the Territorial courts. Without expressing an opinion as to whether this was a perfect or imperfect grant within the meaning of the law, or whether the boundaries might not still be ascertained by a survey, we are satisfied that it is one which the Court of Private Land Claims could not be called upon to confirm, and that, if for no other reason, the petition should be dismissed upon the ground of laches.

The decree of the court below is therefore *Affirmed.*

True copy.

Test:

Clerk Supreme Court, U. S.